

No. 12678

United States
Court of Appeals
for the Ninth Circuit.

FEDERAL SERVICES FINANCE CORPORATION, a Corporation,

Appellant,

vs.

BISHOP NATIONAL BANK OF HAWAII AT
HONOLULU, a Corporation,

Appellee.

Transcript of Record

NOV 24 1950

PAUL P. O'BRIEN,

CLERK

Appeal from the United States District Court,
for the Territory of Hawaii.

No. 12678

United States
Court of Appeals
for the Ninth Circuit.

FEDERAL SERVICES FINANCE CORPORATION, a Corporation,

Appellant,

vs.

BISHOP NATIONAL BANK OF HAWAII AT
HONOLULU, a Corporation,

Appellee.

Transcript of Record

Appeal from the United States District Court,
for the Territory of Hawaii.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amended Complaint	13
Answer of Bishop National Bank of Hawaii at Honolulu	5
Appellant's Designation of Portions of Record to Be Printed.....	203
Bond on Appeal	27
Certificate of Clerk to Transcript of Record on Appeal.....	198
Complaint	2
Counter Designation of Portion of Record to Be Printed.....	205
Exhibits, Defendant's:	
No. 1—Check No. VH 9186 Dated Feb- ruary 2, 1949.....	68
2—Check No. VH 10605 Dated May 9, 1949.....	70
2-A—Voucher No. VH 10605 Dated May 9, 1949.....	77
5—Deposit Slip Dated May 2, 1949...	178

	INDEX	PAGE
Exhibits, Defendants—(Continued):		
C—Letter Dated March 16, 1949.....		166
D—Check No. 9166 Dated January 20, 1949		176
Exhibits, Plaintiff's:		
B-1—Check No. VH 9007 Dated January 21, 1949		53
B-2—Check No. VH 9316 Dated February 10, 1949		54
B-3—Check No. VH 9435 Dated February 17, 1949		55
B-4—Check No. VH 9919 Dated March 22, 1949.		56
B-5—Check No. VH 10017 Dated March 29, 1949		57
B-6—Check No. VH 10065 Dated March 31, 1949		58
B-7—Check No. VH 10157 Dated April 6, 1949		59
B-8—Check No. VH 10248 Dated April 13, 1949		60
B-9—Check No. VH 10576 Dated May 6, 1949		61
B-10—Check No. VH 10733 Dated May 17, 1949		62

INDEX

PAGE

Exhibits, Plaintiff's—(Continued):

B-11—Check No. VH 10770 Dated May 19, 1949	63
B-12—Check No. VH 10774 Dated May 19, 1949	64
C—Articles of Incorporation.....	102
D-5—Bank Statement and Check No. 69 Dated April 29, 1949.....	191
No. 1—Waipahu Auto Exchange, Ltd., By- Laws	111
Findings of Fact and Conclusions of Law.....	17
Judgment	26
Names and Addresses of Attorneys of Record..	1
Notice of Appeal.....	27
Order Extending Time to File the Record on Appeal	29
Statement of Points Upon Which Appellant Intends to Rely on Appeal.....	200
Stipulation Abridging Record to Be Printed..	29
Transcript of Proceedings.....	31
Witnesses, Plaintiff's:	
Holloway, Lloyd Edward Jr.	
—direct	44
—cross	65
—redirect	82

Witnesses, Plaintiff's—(Continued):

Lee, Herbert K. H.

—direct101, 108, 132

—voir dire 127

Yokono, Takeshi

—direct 85

—voir dire 88

—cross94, 136, 153

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

For the Plaintiff, Federal Services Finance Corporation;

LEWIS, KIMBALL & BUCK,
1160 Bishop Street,
Honolulu, T. H.

For the Defendant, Bishop National Bank of Hawaii
at Honolulu,

SMITH, WILD, BEEBE & CADES,
Bishop Trust Building,
Honolulu, T. H.

ANDERSON, WRENN & JENKS,
Bank of Hawaii Building,
Honolulu, T. H.

In the United States District Court for the
Territory of Hawaii
Civil No. 947

FEDERAL SERVICES FINANCE
CORPORATION, a Delaware Corporation,
Plaintiff,

vs.

BISHOP NATIONAL BANK OF HAWAII AT
HONOLULU, a Hawaiian Corporation,
Defendant.

COMPLAINT

Plaintiff, Federal Services Finance Corporation,
a corporation, complaining of Bishop National Bank
of Hawaii at Honolulu, a corporation, alleges:

1.

Plaintiff is a corporation incorporated under the
laws of the State of Delaware. Defendant is a cor-
poration incorporated under the laws of the Terri-
tory of Hawaii. The matter in controversy exceeds,
exclusive of interest and costs, the sum of \$3,000.00.

2.

At all times herein mentioned defendant has been
and is now carrying on a general banking business
in the Territory of Hawaii, and maintains and con-
ducts a bank in the City and County of Honolulu,
said Territory. Plaintiff at all times herein men-

tioned has had money on deposit in a commercial checking account in defendant's said bank at Honolulu.

3.

On or about the dates hereinafter named, plaintiff drew its certain checks against said account in defendant's said bank for the respective amounts set opposite said respective dates, to wit:

1. Check No. VH 9007 dated January 21, 1949, in the amount of \$1,337.00.
2. Check No. VH 9316 dated February 10, 1949, in the amount of \$1,500.00.
3. Check No. VH 9919 dated March 22, 1949, in the amount of \$1,500.00.
4. Check No. VH 10017 dated March 29, 1949, in the amount of \$1,500.00.
5. Check No. VH 10065 dated March 31, 1949, in the amount of \$1,437.00.
6. Check No. VH 10157 dated April 6, 1949, in the amount of \$1,500.00.
7. Check No. VH 10248 dated April 13, 1949, in the amount of \$1,000.00.
8. Check No. VH 10576 dated May 6, 1949, in the amount of \$1,240.00.
9. Check No. VH 10733 dated May 17, 1949, in the amount of \$1,200.00.
10. Check No. VH 10770 dated May 19, 1949, in the amount of \$2,480.00.

11. Check No. VH 10774 dated May 19, 1949, in the amount of \$1,495.00.

4.

Each and every of said checks was payable to the order of Waipahu Auto Exchange, Limited, a corporation organized under the laws of the Territory of Hawaii, as payee herein.

5.

On or about the respective dates of said checks one Anthony Yee took said checks and wrongfully, and without any right, authority or permission, endorsed each thereof in blank with the name of the payee named therein.

6.

None of said checks was paid by said defendant according to the terms of said checks, to wit: to said payee named therein or to the order of said payee.

7.

On or about the respective dates of said checks, upon presentation thereof for payment, defendant wrongfully cancelled each said check and wrongfully deducted and withdrew from plaintiff's said account in defendant's said bank, a sum equal to the full amount of each said check and charged its account with each such amount.

8.

Heretofore and prior to the commencement of this action, plaintiff tendered each and every said can-

celled check to defendant and demanded of defendant that defendant repay to plaintiff the sum of \$16,189.00, being the aggregate amount of said checks, and of said deductions and withdrawals by defendant from plaintiff's said account in defendant's said bank, but defendant refused and still refuses to pay the same, and that no part of said sum has been paid to plaintiff, or at all.

9.

By reason of the foregoing there is now due, owing and unpaid from defendant to plaintiff the sum of \$16,189.00.

Wherefore, plaintiff demands judgment against defendant for the sum of \$16,189.00, together with interest, costs, expenses and attorney's fees.

Dated at Honolulu, Hawaii, October 3rd, 1949.

LEWIS, KIMBALL & BUCK,

/s/ EDWARD Z. BUCK,

Attorney for Plaintiff.

[Endorsed]: Filed October 3, 1949.

[Title of District Court and Cause.]

ANSWER OF BISHOP NATIONAL BANK
OF HAWAII AT HONOLULU

For answer to the complaint of the plaintiff in the above-entitled cause, defendant, Bishop National Bank of Hawaii at Honolulu, a national banking

association (erroneously referred to in the complaint as a Hawaiian corporation) says:

First Defense

The complaint fails to state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant.

Second Defense

1. Defendant admits the allegations of paragraphs 1, 2, 3 and 4, except that defendant denies that it is a corporation incorporated under the laws of the Territory of Hawaii.

2. Defendant denies the allegations of paragraph 5, and avers that at all relevant times Anthony Yee was president of Waipahu Auto Exchange, Limited, a Hawaiian corporation, and the payee named in each of the checks herein referred to; that the checks referred to in said paragraph were delivered by the plaintiff to Anthony Yee, in his capacity as president of Waipahu Auto Exchange, Limited; that the acceptance of delivery by Anthony Yee was in accordance with right, authority and permission of the corporation; that said Anthony Yee, in his capacity as president of said corporation, did have actual, implied and apparent authority to receive said checks and to negotiate and endorse the same and said Anthony Yee, as president as aforesaid, did in fact negotiate and endorse said checks and each of them; that the defendant had no knowledge of any limitation upon the authority of said Anthony Yee.

3. Defendant denies the allegations of paragraph 6.

4. Answering paragraph 7, defendant denies the allegations thereof, but admits that upon presentation of the following checks for payment by Anthony Yee, in his capacity as president of Waipahu Auto Exchange, Limited, as aforesaid, the defendant did cash said checks, did cancel the same, and did charge the amounts thereof against the account of the plaintiff, viz:

(1) Check No. VH 9007, dated January 21, 1949, in the amount of \$1,337.00;

(2) Check No. VH 9316, dated February 10, 1949, in the amount of \$1,500.00;

(3) Check No. VH 9919, dated March 22, 1949, in the amount of \$1,500.00;

(4) Check No. VH 10017, dated March 29, 1949, in the amount of \$1,500.00;

(5) Check No. VH 10065, dated March 31, 1949, in the amount of \$1,437.00;

(6) Check No. VH 10157, dated April 6, 1949, in the amount of \$1,500.00;

(7) Check No. VH 10248, dated April 13, 1949, in the amount of \$1,000.00;

(8) Check No. VH 10576, dated May 6, 1949, in the amount of \$1,240.00;

—that prior to cashing each of said checks said Anthony Yee was identified by an authorized em-

ployee of the defendant as being the president of the said Waipahu Auto Exchange, Limited, and at the time of the cashing of each of said checks the defendant in good faith, believed that said Anthony Yee, as president as aforesaid, had authority to cash said checks, and relied upon representations made by said Anthony Yee that he was cashing said checks for a corporate purpose, and had no knowledge of any limitation upon the authority of said Anthony Yee to receive payment therefor.

5. Further answering said paragraph 7, defendant avers on information and belief that with respect to the following checks, viz:

(9) Check No. VH 10733, dated May 17, 1949, in the amount of \$1,200.00;

(10) Check No. VH 10770, dated May 19, 1949, in the amount of \$2,480.00; and

(11) Check No. VH 10774, dated May 19, 1949, in the amount of \$1,495.00,

—said Anthony Yee, in his capacity as president of Waipahu Auto Exchange, Limited, as aforesaid, presented each of said checks to the Bank of Hawaii, a Hawaiian banking corporation; that an authorized employee of said Bank of Hawaii identified Anthony Yee as president of said corporation; that said Bank of Hawaii made payment of each of said checks to Anthony Yee in his capacity as president aforesaid; that said Bank of Hawaii endorsed each of said checks to the order of any bank, banker or trust company and guaranteed all prior endorse

ments and thereafter delivered said checks so endorsed to the defendant; that at the time that the Bank of Hawaii cashed each of said checks defendant avers on information and belief that the Bank of Hawaii acted in good faith, believing that said Anthony Yee, as president as aforesaid, had authority to cash said checks, and had no knowledge of any limitation upon the authority of the said Anthony Yee to receive payment therefor, and relied upon representations made by said Anthony Yee that he was cashing said checks for a corporate purpose.

6. Defendant admits the allegations of paragraph 8 and further avers that prior to the commencement of this action plaintiff tendered, in addition to the checks referred to in the complaint, Check No. VH 9435, dated February 17, 1949, in the amount of \$1,537.00, and demanded, in addition to the amounts referred to in said paragraph 8, the repayment of said check.

7. Defendant denies the allegations of paragraph 9 and alleges that there is no sum owing from the defendant to the plaintiff by reason of the matters hereinabove alleged.

Third Defense

1. And for a further and separate defense the defendant avers that the plaintiff has had a commercial checking account with the defendant since June 16, 1937; that each and every month checks drawn by the plaintiff on said bank account were returned to the plaintiff with a monthly statement of

account; that by the monthly statements the plaintiff was put on notice that unless within thirty (30) days from the date of the receipt of the statement the defendant was notified of errors in the statement the depositor would be deemed to have accepted the statement as correct; that by reason of the existence of said account and of said practice in connection therewith the plaintiff was under a duty to examine its returned cancelled checks and to do everything reasonably calculated to disclose unauthorized signatures, if any, and to give prompt notice of any unauthorized signatures to the bank; that if, as alleged by the plaintiff, the acts of Anthony Yee were in fact unauthorized, because of its close business association with Waipahu Auto Exchange, Limited, plaintiff was in the best position to ascertain such fact and was bound to notify the defendant within thirty (30) days from the receipt of the cancelled checks that the endorsements were unauthorized; that Waipahu Auto Exchange, Limited, was not a client, customer or depositor of the defendant; that defendant avers on information and belief that plaintiff in issuing its checks relied upon the authority of Anthony Yee to act for Waipahu Auto Exchange, Limited, and relied on the fact that said Anthony Yee could by his own signature transfer the title to motor vehicles under the Motor Vehicle Registration Law, and that he could and did transfer and assign conditional sales contracts to the plaintiff, said conditional sales contracts having been entered into for and on behalf of said Waipahu Auto Exchange, Limited, solely by said Anthony

Yee as president as aforesaid; that plaintiff has wholly neglected and failed to discharge the said duty to said bank and by reason of a breach thereof is estopped to claim that the endorsement by said Anthony Yee in his capacity as president as aforesaid was unauthorized.

2. Upon information and belief defendant avers that the proceeds of the following checks, viz: Check No. VH 10770, dated May 19, 1949, in the amount of \$2,480.00, and Check No. VH 10774, dated May 19, 1949, in the amount of \$1,495.00; were used in part by said Anthony Yee to purchase a cashier's check to be placed to the credit of Waipahu Auto Exchange, Limited, in the amount of \$3,582.78; that said cashier's check was in fact deposited to the credit of Waipahu Auto Exchange, Limited, in the Waipahu Branch of the Bank of Hawaii.

3. Defendant avers that on or about February 17, 1949, defendant cashed in the same manner alleged in paragraph 4 of the Second Defense (incorporated herein by reference) hereinabove a check numbered VH 9435, dated February 17, 1949, in the amount of \$1,537.00, drawn by the plaintiff and payable to Waipahu Auto Exchange, Limited; that defendant is informed and believes that Waipahu Auto Exchange, Limited, received the proceeds of said check directly or indirectly.

4. Defendant is informed and believes that in one or more other instances, the details of which are unknown to this defendant, checks payable to

Waipahu Auto Exchange, Limited, drawn by other drawers, were with the consent and acquiescence of other officers and directors of the corporation endorsed and cashed by the said Anthony Yee in his capacity as president as aforesaid.

5. The defendant is informed and believes that other officers and directors of Waipahu Auto Exchange, Limited from time to time represented that said Anthony Yee, in his capacity as president as aforesaid, had full authority to carry on financial transactions on behalf of Waipahu Auto Exchange, Limited, and to execute on behalf of the corporation any and all documents involved in any such transaction, and the defendant and others have relied upon said representations; that by reason of the foregoing course of conduct Waipahu Auto Exchange, Limited, and the plaintiff are estopped to deny that Anthony Yee, in his capacity as president, had authority to negotiate and endorse the said checks as aforesaid.

Fourth Defense

Defendant avers on information and belief that some time prior to June 8, 1949, the plaintiff learned for the first time that Mr. Anthony Yee had committed a number of defalcations and thereafter attempted to commit suicide; that after making an investigation, plaintiff then discovered that some of the vehicles described in the conditional sales agreements which it had discounted for Waipahu Auto Exchange, Limited, were in fact fictitious; defend-

ant avers that the plaintiff was at fault in fully relying upon Anthony Yee and in putting into circulation negotiable instruments which enabled him, as president as aforesaid, to impose loss upon innocent persons and that the plaintiff is not entitled to recover from the defendant any amount to make good the loss which resulted from its own negligence and misplaced confidence in said Anthony Yee.

Wherefore defendant prays that the complaint of the plaintiff be dismissed with costs to the defendant.

Dated: Honolulu, T. H., this 24th day of October, 1949.

/s/ J. RUSSELL CADES,

/s/ H. BAIRD KIDWELL,

Attorneys for Defendant.

SMITH, WILD, BEEBE &
CADES,

ANDERSON, WRENN &
JENKS,

Of Counsel.

Receipt of Copy Acknowledged.

[Endorsed]: Filed October 24, 1949.

[Title of District Court and Cause.]

AMENDED COMPLAINT

Plaintiff, Federal Services Finance Corporation,
a corporation, complaining of Bishop National

Bank of Hawaii at Honolulu, a corporation, alleges:

1.

Plaintiff is a corporation incorporated under the laws of the State of Delaware. Defendant is a national banking association located in the Territory of Hawaii. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00.

2.

At all times herein mentioned defendant has been and is now carrying on a general banking business in the Territory of Hawaii, and maintains and conducts a bank in the City and County of Honolulu, said Territory. Plaintiff at the times herein mentioned had money on deposit in a commercial checking account in defendant's said bank at Honolulu in excess of the amounts of the checks herein after mentioned and all other checks drawn by plaintiff on defendant bank when presented for payment.

3.

On or about the dates hereinafter named, plaintiff drew its certain checks against said account in defendant's said bank for the respective amounts set opposite said respective dates, to wit:

1. Check No. VH 9007 dated January 21, 1949, in the amount of \$1,337.00.

2. Check No. VH 9316 dated February 10, 1949 in the amount of \$1,500.00

3. Check No. VH 9435, dated February 17, 1949, in the amount of \$1,537.00
4. Check No. VH 9919 dated March 22, 1949, in the amount of \$1,500.00
5. Check No. VH 10017 dated March 29, 1949, in the amount of \$1,500.00.
6. Check No. VH 10065 dated March 31, 1949, in the amount of \$1,437.00
7. Check No. VH 10157 dated April 6, 1949, in the amount of \$1,500.00
8. Check No. VH 10248 dated April 13, 1949, in the amount of \$1,000.00
9. Check No. VH 10576 dated May 6, 1949, in the amount of \$1,240.00
10. Check No. VH 10733 dated May 17, 1949, in the amount of \$1,200.00
11. Check No. VH 10770 dated May 19, 1949, in the amount of \$2,480.00
12. Check No. VH 10774 dated May 19, 1949, in the amount of \$1,495.00

4.

Each and every of said checks was payable to the order of Waipahu Auto Exchange, Limited, a corporation organized under the laws of the Territory of Hawaii, as payee therein.

5.

On or about the respective dates of said checks one Anthony Yee took said checks and wrongfully, and without any right, authority or permission, endorsed each thereof in blank with the name of the payee named therein.

6.

None of said checks was paid by said defendant according to the terms of said checks, to wit: to said payee named therein or to the order of said payee.

7.

On or about the respective dates of said checks, upon presentation thereof for payment, defendant wrongfully cancelled each said check and wrongfully deducted and withdrew from plaintiff's said account in defendant's said bank, a sum equal to the full amount of each said check and charged its account with each such amount.

8.

Heretofore and prior to the commencement of this action, plaintiff tendered each and every said cancelled check to defendant and demanded of defendant that defendant repay to plaintiff the sum of \$17,726.00, being the aggregate amount of said checks, and of said deductions and withdrawals by defendant from plaintiff's said account in defendant's said bank, but defendant refused and still refuses to pay the same, and that no part of said sum has been paid to plaintiff, or at all.

9.

By reason of the foregoing there is now due, owing and unpaid from defendant to plaintiff the sum of \$17,726.00 in addition to sums admitted by defendant to be owing to plaintiff by reason of said commercial checking account maintained by plaintiff in defendant's said bank.

Wherefore, plaintiff demands judgment against defendant for the sum of \$17,726.00, together with interest, costs, expenses and attorney's fees.

Dated at Honolulu, Hawaii, March 15th, 1950.

/s/ EDWARD Z. BUCK,
Attorney for Plaintiff.

Receipt of Copy Acknowledged.

[Endorsed]: Filed March 15, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The case having come on for hearing before the undersigned Judge, the parties hereto having waived jury trial and the plaintiff having presented its evidence and rested, and the court having found that upon the evidence adduced the complaint should be dismissed and judgment entered in favor of the defendant, upon the record, testimony and evidence adduced in this case the court makes the following findings of fact:

1.

Plaintiff is a corporation incorporated under the laws of the State of Delaware. Defendant is a national banking association located in the Territory of Hawaii. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00.

2.

That the defendant has at all relative times and is now carrying on a general banking business in the Territory of Hawaii and maintains and conducts a bank in the City and County of Honolulu, said Territory. Plaintiff at all relative times had money on deposit in a commercial checking account in defendant's said bank in Honolulu in excess of the amounts of the checks which are the subject of this litigation and all other checks drawn by the plaintiff on the defendant bank when presented for payment.

3.

On or about the dates hereinafter named, plaintiff drew and delivered its certain checks against said account in defendant's said bank for the respective amounts set opposite said respective dates, to wit:

1. Check No. VH 9007 dated January 21, 1949, in the amount of \$1,337.00

2. Check No. VH 9316 dated February 10, 1949, in the amount of \$1,500.00

3. Check No. VH 9435 dated February 17, 1949, in the amount of \$1,537.00

4. Check No. VH 9919 dated March 22, 1949, in the amount of \$1,500.00

5. Check No. VH 10017 dated March 29, 1949, in the amount of \$1,500.00

6. Check No. VH 10065 dated March 31, 1949, in the amount of \$1,437.00

7. Check No. VH 10157 dated April 6, 1949, in the amount of \$1,500.00

8. Check No. VH 10248 dated April 13, 1949, in the amount of \$1,000.00

9. Check No. VH 10576 dated May 6, 1949, in the amount of \$1,240.00

10. Check No. VH 10733 dated May 17, 1949, in the amount of \$1,200.00

11. Check No. VH 10770 dated May 19, 1949, in the amount of \$2,480.00

12. Check No. VH 10774 dated May 19, 1949, in the amount of \$1,495.00.

4.

Each and every of said checks was payable to the order of Waipahu Auto Exchange, Limited, a corporation organized under the laws of the Territory of Hawaii, as payee therein, and were delivered to Anthony Yee in his capacity as President of said corporation.

5.

That in addition to the checks which are the subject of this litigation plaintiff drew its check No.

VH 10605 dated May 9, 1949, in the amount of \$1455.00, which said check was likewise payable to Waipahu Auto Exchange, Limited, and was delivered to said Anthony Yee, in his capacity as President of said corporation.

6.

That all of the checks referred to in paragraph 3 and the check referred to in paragraph 5 were each endorsed on behalf of Waipahu Auto Exchange, Limited, by Anthony Yee as President; that said Anthony Yee, at the time that he endorsed each of said checks, was the President of said corporation and as such president endorsed and cashed said checks.

7.

That upon presentation of the following checks for payment by Anthony Yee in his capacity as President of Waipahu Auto Exchange, Limited, the defendant did cash said checks, did cancel the same and did charge the amounts thereof against the account of the plaintiff, viz:

1. Check No. VH 9007 dated January 21, 1949, in the amount of \$1,337.00

2. Check No. VH 9316 dated February 10, 1949, in the amount of \$1,500.00

3. Check No. VH 9435 dated February 17, 1949, in the amount of \$1,537.00

4. Check No. VH 9919 dated March 22, 1949, in the amount of \$1,500.00

5. Check No. VH 10017 dated March 29, 1949, in the amount of \$1,500.00

6. Check No. VH 10065 dated March 31, 1949, in the amount of \$1,437.00

7. Check No. VH 10157 dated April 6, 1949, in the amount of \$1,500.00

8. Check No. VH 10248 dated April 13, 1949, in the amount of \$1,000.00

9. Check No. VH 10576 dated May 6, 1949, in the amount of \$1,240.00

8.

That with respect to the following checks, viz:

Check No. VH 10733 dated May 17, 1949, in the amount of \$1,200.00

Check No. VH 10770 dated May 19, 1949, in the amount of \$2,480.00

Check No. VH 10774 dated May 19, 1949, in the amount of \$1,495.00

said Anthony Yee, in his capacity as President of Waipahu Auto Exchange, Limited, presented and cashed each of said checks at the Bank of Hawaii, a Hawaiian banking corporation; that said Bank of Hawaii endorsed each of said checks to the order of any bank, banker or trust company and guaranteed all prior endorsements and thereafter delivered said checks so endorsed to the defendant; that said defendant did cancel the same and did charge the amounts thereof against the account of the plaintiff.

9.

That with respect to the following check, viz:

Check No. VH 10605 dated May 9, 1949, in the amount of \$1455.00

said Anthony Yee in his capacity as President of Waipahu Auto Exchange, Limited, as aforesaid, presented said check to the plaintiff, said plaintiff made payment of said check to Anthony Yee upon his endorsement as President as aforesaid, and said Plaintiff thereafter endorsed said check, cashed as aforesaid, and deposited it in plaintiff's commercial checking account with the defendant; defendant did cancel the same and did charge the amount thereof against the account of the plaintiff.

10.

That Waipahu Auto Exchange, Limited, maintained a checking account in the Bank of Hawaii and did not maintain an account in the defendant bank; that one Takeshi Yokono was the Treasurer of Waipahu Auto Exchange, Limited; that as Treasurer he knew that the corporation had dealings with the plaintiff but the corporation never adopted any resolution relating to the conduct of that business; that the Treasurer had no personal knowledge of any arrangements that had been made on behalf of the Waipahu Auto Exchange, Limited, with the plaintiff corporation and he depended on the President of the corporation, Anthony Yee, to make and carry out the business arrangement with the plaintiff corporation.

11.

Herbert Lee, an attorney at law, was the attorney for Waipahu Auto Exchange, Limited, and for the associates prior to incorporation. Mr. Lee drafted the proposed by-laws and articles of association, and, although not a stockholder, made himself one of the incorporators to comply with the Hawaii statute requiring five incorporators. Mr. Lee also described himself as a "dummy director." He was never notified of any meetings of directors, and never attended any directors' or stockholders' meetings. No substitute director was ever appointed for Mr. Lee. The business of the corporation was carried on in an informal manner.

12.

The deposit by the plaintiff of a check cashed for the corporation by Anthony Yee constituted a representation to the Bank that Anthony Yee was authorized to cash checks.

13.

The plaintiff received from the defendant bank each month a statement of its account with the cancelled checks and on each of said monthly statement there appeared the statement, "If you do not notify us within 30 days from this date you will be deemed to have accepted the statement as correct and the vouchers and checks as genuine." The plaintiff did not customarily examine the endorsements on its checks and did not notify the Bank that it objected to any charges against the account until

some time after May 19, 1949. On May 2, 1949, the corporation was without funds and Yee and Yokono agreed that they must help the company by financing. To assist the corporation Yee gave the corporation his personal check in the amount of \$3582.78 which check was turned down by the defendant bank for insufficient funds after it had been deposited by Waipahu Auto Exchange, Limited, in its bank account in the Bank of Hawaii. Later Yee made the check good but there is no evidence as to how the check was made good. The Treasurer was relying upon the President for the financial operations of Waipahu Auto Exchange, Limited.

Conclusions of Law

1. That by virtue of this office as President of Waipahu Auto Exchange, Limited, Anthony Yee had prima facie authority to endorse negotiable paper and receive payment therefor on behalf of said corporation.

2. That by virtue of the acts of officers and directors of the corporation, in permitting the President to make financial arrangements for the corporation, the President, Anthony Yee, had implied authority to endorse the checks in question and receive payment therefor on behalf of said corporation.

3. That the President, Anthony Yee, had apparent authority to endorse the checks in question and receive payment therefor on behalf of said corporation.

4. That Anthony Yee dealt for the corporation in the affairs of its financing with the knowledge of its officers and directors, and no notification was given to the defendant that the President's authority to endorse checks was in any manner limited.

5. That the plaintiff has wholly failed to prove the allegation No. 5 of its Complaint, viz:

“On or about the respective dates of said checks one Anthony Yee took said checks and wrongfully, and without any right, authority or permission, endorsed each thereof in blank with the name of the payee named therein.”

6. That each of said checks has been paid in accordance with the terms thereof.

7. Judgment dismissing the Complaint and in favor of the defendant will be entered upon presentation.

Dated: Honolulu, T. H., this 10th day of April, 1950.

/s/ A. E. METZGER,

Judge, United States District
Court.

Receipt of Copy Acknowledged.

[Endorsed]: Filed April 10, 1950.

In the United States District Court
For the District of Hawaii
Civil No. 947

FEDERAL SERVICES FINANCE
CORPORATION, a Delaware Corporation,
Plaintiff.

vs.

BISHOP NATIONAL BANK OF HAWAII
AT HONOLULU, a National Banking
Association,
Defendant.

JUDGMENT

This cause having come on regularly for trial on March 15, 1950 before the Court sitting without a jury; and at the conclusion of the testimony adduced and presented by and on behalf of the plaintiff counsel for the defendant having made a motion for judgment of dismissal upon the merits and the Court having heard arguments of counsel in support of and against said motion, and having filed its Findings of Fact and Conclusions of Law herein; Now, Therefore,

It Is Hereby Ordered, Adjudged and Decreed that said action is hereby dismissed upon the merits, and that the plaintiff take nothing by this action and that the defendant go hereof without day.

Dated this 10th day of April, 1950.

/s/ D. E. METZGER,

Judge, United States District
Court.

Docketed April 10, 1950.

[Endorsed]: Filed April 10, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Federal Services Finance Corporation, a Delaware Corporation, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the final judgment entered in this action on April 10, 1950. This appeal is taken pursuant to Rule 73 (a) of Rules of Civil Procedure for District Courts within thirty (30) days following the denial of a motion for a new trial under Rule 59 of said rules, which motion was denied on May 19, 1950.

Dated: Honolulu, T. H., this 15th day of June, 1950.

/s/ WILLIAM W. SAUNDERS,
Attorney for Appellant, Federal Services Finance Corporation.

[Endorsed]: Filed June 16, 1950.

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men By These Presents:

That we, Federal Services Finance Corporation, a Delaware corporation, as principal, and Home Insurance Company of Hawaii, Limited, as surety, are held and firmly bound unto the above named defendant, Bishop National Bank of Hawaii at Honolulu, a national banking association, in the full and just sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said defendant, its successors or assigns, to which payment well and truly to be

made we bind ourselves, our successors and assigns, jointly and severally by these presents.

Executed this 16th day of June, 1950.

The condition of this obligation is such that:

Whereas, on the 10th day of April, 1950, in the above entitled action between the above named plaintiff, Federal Services Finance Corporation, and the above named defendant, Bishop National Bank of Hawaii at Honolulu, a judgment was rendered against the said plaintiff and the said plaintiff has appealed to the United States Court of Appeals for the Ninth Circuit;

Now, Therefore, if said Federal Services Finance Corporation shall pay the costs if said appeal is dismissed or the judgment affirmed, or such costs as the appellate court may award if the judgment is modified, then the above obligation to be void; otherwise in full force and effect.

FEDERAL SERVICES
FINANCE CORPORATION,

By /s/ L. S. HOLLOWAY,
Its Manager, Honolulu
Branch.

HOME INSURANCE COM-
PANY OF HAWAII,
LIMITED

By /s/ [Indistinguishable],
Its Attorney in fact,

[Seal] By /s/ CARL BAIRD,
Attorney in fact.

[Endorsed]: Filed June 16, 1950.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
THE RECORD ON APPEAL

Upon consideration of the stipulation of the parties hereto and good cause shown, it is by the Court this 21st day of July, 1950, ordered that the time for filing the record on appeal with the United States Court of Appeals for the Ninth Circuit and the time for docketing said action in said Appellate Court, shall be extended to ninety (90) days from June 16, 1950, the day on which the appeal was noted herein.

/s/ D. E. METZGER,

Judge.

[Endorsed]: Filed July 21, 1950.

[Title of District Court and Cause.]

STIPULATION ABRIDGING RECORD
TO BE PRINTED

In this cause it is stipulated by and between the parties through their respective counsel for the purpose of abridging the printed transcript of record herein on appeal to the United States Court of Appeal for the Ninth Circuit, that although there is no showing that the Defendant had knowledge thereof, all of the checks drawn by Waipahu Auto Exchange, Limited, on its account in the Waipahu

Branch, Bank of Hawaii, during the period of its corporate existence, were signed as follows:

WAIPAHU AUTO
EXCHANGE, LTD.

By /s/ T. YOKONO,
Treasurer.

Countersigned:

By /s/ F. H. SHINTAKU,
Vice-President.

(Bank of Hawaii is an independent bank and
in no manner affiliated with Defendant.)

Dated: Honolulu, Hawaii, this 29th day of
August, 1950.

FEDERAL SERVICES
FINANCE CORPORATION,
Plaintiff-Appellant.

By /s/ WILLIAM W. SAUNDERS,

By /s/ EDWARD Z. BUCK,
Its Attorneys.

BISHOP NATIONAL BANK OF
HAWAII AT HONOLULU,
Defendant-Appellee

By /s/ J. RUSSELL CADES,

By /s/ H. BAIRD KIDWELL,
Its Attorneys.

[Endorsed]: Filed August 29, 1950.

In the United States District Court
For the District of Hawaii
Civil No. 947

FEDERAL SERVICES FINANCE CORPORA-
TION, a Delaware Corporation,
Plaintiff,

vs.

BISHOP NATIONAL BANK OF HAWAII AT
HONOLULU, a National Banking Association,
Defendant.

Before: Hon. Delbert E. Metzger,
Judge.

Appearances:

WILLIAM W. SAUNDERS, ESQ.,
EDWARD Z. BUCK,
1160 Bishop Street,
Honolulu, T. H.,
Appearing for the Plaintiff.

J. RUSSELL CADES, ESQ.,
Bishop Trust Building,

H. BAIRD KIDWELL,
Bank of Hawaii Building,
Honolulu, T. H.,
Appearing for the Defendant.

TRANSCRIPT OF PROCEEDINGS

March 15 and 16, 1950

The Clerk: Civil No. 947, Federal Services
Finance Corporation, a Delaware corporation,

Plaintiff, vs. Bishop National Bank of Hawaii at Honolulu, a national banking association, Defendant, for trial.

Mr. Buck: Ready for the Plaintiff, your Honor.

Mr. Cades: Ready for the Defendant, your Honor.

Mr. Buck; If the Court please, under Rule 15 I would like at this time to file with the Court an amended complaint, which has been consented to by Counsel for the defendant.

Mr. Cades: If your Honor please, in consenting to the filing of the complaint, I stated to Counsel that I wanted to reserve the right to file, if I saw fit, within forty-eight hours, an amended answer, if one were necessary, but in order not to delay the trial I was quite willing to have our answer to the original complaint stand as an answer to this complaint, with the right to file an amended answer within, say, forty-eight hours.

The Court: All right.

Mr. Buck: Do I understand from Counsel for the defendant that we may proceed on the basis that you have admitted all of the matters that you have admitted in your original answer and that you allege all the matters that you allege in your original answer?

Mr. Cades: That is correct, the answer stands, but subject to my right, by reason of the filing of an amended complaint, to file an amended answer within a reasonable time.

Mr. Buck: May it please the Court, Mr. William W. Saunders, an associate of the firm of Lewis,

Kimball & Buck, will be associated with me in the trial of the case and will conduct the case for the plaintiff, as principal attorney.

Mr. Saunders: May it please the Court, to simplify matters, the amended complaint filed by the plaintiff this morning changes very little the language of the original complaint, with the exception that, referring to page 2 of the original complaint, there is added one more check under paragraph 3, the check being Check No. VH 9435, dated February 17, 1949, in the amount of \$1,537, which should go in between 2 and 3 of the original complaint.

The only other changes have to do with the amount of the demand being increased by the amount of \$1,537, and we made minor changes in the language of paragraph 2, wherein we alleged that not only did we have money on deposit as alleged in our original complaint, but also that the money on deposit was in excess of the amounts of the checks listed here and "all other checks drawn by the plaintiff on the defendant bank when presented for payment."

The Court: Yes. [2*]

Mr. Saunders: Likewise, in our last paragraph, page 4, we made a minor change in that we say there is due and owing to the plaintiff the sum of \$17,726. That is the same sum we alleged in our original complaint, except it is increased by the sum of \$1,537; and we state that in addition to the \$17,726 owing, there is also owing the amounts admitted by the bank in their monthly statements.

The Court: What was that last statement?

Mr. Saunders: Well, "By reason of the fore-

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

going there is now due, owing and unpaid from defendant to plaintiff the sum of \$17,726.00 in addition to sums admitted by defendant to be owing to plaintiff by reason of said commercial checking account maintained by plaintiff in defendant's said bank."

In other words, plaintiff is still maintaining a current checking account with defendant bank.

The Court: Well, you don't have to sue for that.

Mr. Saunders: No, we aren't suing for that, and we want to make it clear that this suit did not cover any such sums. In other words, we say there is due and owing \$17,726, which we are now suing for. The rest is admitted in their monthly statements as due and owing.

The Court: Yes.

Mr. Saunders: The case presented this morning, if your Honor please, is one by a drawer maintaining an account [3] in the Bishop National Bank of Honolulu, or, rather, the Bishop National Bank of Hawaii at Honolulu.

The way the case arose, the plaintiff wrote a series of checks payable to Waipahu Auto Exchange, Limited. These are the checks that are enumerated in our amended complaint. The checks were then paid, either in cash directly by defendant bank, or by another bank and run through the bank clearing house, so that they were ultimately paid by the defendant bank in each case, and they were charged against the account of the plaintiff.

We are proposing to prove, or we feel that under

the law it is necessary first to prove merely these facts:

First, that deposits of these amounts were made in the defendant bank;

Secondly, that over and above admitted charges that the bank made, that is, admitted justified charges that the bank made against this account, that the plaintiff now questions and denies that the amounts represented by these checks were rightfully charged against the account.

Under the law we also will prove—It is admitted, as a matter of fact, that the demand was made by the plaintiff against the defendant for the repayment of these sums represented by the 12 checks, the aggregate demand being \$17,726. Under the law we understand that that sets up a debtor-creditor relationship, that it then is incumbent upon the bank to go [4] forward with the proof and show that payment was made on the depositor's order, according to the depositor's order.

However, to further clarify the thing, we intend to put these checks in evidence, so that there will be before the Court just what the nature of the demand is and how the dispute arose, and we will make a showing that the person who cashed these checks was not, in fact, authorized to cash these checks.

The Court: The person who cashed the checks was not in fact——

Mr. Saunders: Authorized. These checks were made payable to Waipahu Auto Exchange, Limited. We will show, by introducing checks, they were all

endorsed on the back, "Waipahu Auto Exchange, Limited by Anthony Yee, president." We will show that Anthony Yee, president, was not authorized to endorse and receive cash for these checks.

The Court: Was that a fact that was known to the bank?

Mr. Saunders: That he was not authorized?

The Court: That he was not authorized.

Mr. Saunders: That is a matter of their proof, your Honor. We think it is immaterial whether they did or not. The duty of a bank to its depositor is to pay only according to the depositor's order, and failure to do that gives rise to liability on the part of the bank. The bank [5] must, at its peril, identify the payee.

The Court: This man was not president?

Mr. Saunders: He was president, but not authorized to endorse these checks and receive cash for that.

The Court: It seems to me from that statement that a bank would be in great jeopardy in cashing any corporation or firm checks.

Mr. Saunders: They certainly would, and that is why the usual procedure is to run these checks through a corporation account.

The Court: Was that fact disputed, that this man was not in authority?

Mr. Saunders: That's right.

The Court: To sign the check as president?

Mr. Saunders: That is right, the bank disputes that.

The Court: You claim he is not?

Mr. Saunders: We claim it merely to clarify the issue. Under the law we only have to set up a debtor-creditor relationship and show we made demand for the repayment of the debt and that the demand was refused.

The Court: Hadn't you drawn an order against the bank for the payment of these checks?

Mr. Saunders: It is a part of the regular doctrine in law, if your Honor please, that payment is an affirmative [6] defense. We have drawn an order on the bank telling them to pay to Waipahu Auto Exchange, Limited. We contend they did not pay to Waipahu Auto Exchange, Limited, but they paid to one Anthony Yee, who represented to the Bank that he was authorized to sign for Waipahu Auto Exchange, Limited.

The Court: Well, who would be authorized to sign it?

Mr. Saunders: We will show that by the by-laws, if your Honor please.

The Court: Well, must a bank be familiar with all the by-laws of every depositor?

Mr. Saunders. As we understand the law, and we will cite authority, the bank, at its peril, must identify the payee. It is incumbent upon the bank, when a check is presented by any person, whether it is an individual or corporation, to ascertain that that person is either the payee named or is authorized by the payee to receive payment for that check.

The Court: Well, if the president of the corporation can't identify the corporation, what officer can?

Mr. Saunders: Usually, if your Honor please,

in any corporation the authority for management is split. The president will have certain duties, and usually the financial end of the corporation is left up to one or more persons under the department of the treasurer. For instance, American Factors——[7]

The Court: Does the president have any other office besides that of president?

Mr. Saunders: In this case he was sales manager.

The Court: Well, go ahead with your proof then, unless the defendant wants to make a statement.

Mr. Cades: If your Honor please, I think it would simplify it if I made a very short statement. By "short" I mean Counsel has neglected to summarize the pleadings and I think it would help your Honor if we went over what is admitted and denied, for it is an extremely technical case.

The plaintiffs have been defrauded by President Anthony Yee. The proof will show that they have been misled into issuing a series of checks to him for a lot of cars that were non-existent. Having discovered that they were defrauded after five or six months of conduct with one Anthony Yee, President Anthony Yee, they come into court and say "Our losses for being defrauded must now fall on the bank." And the reason for making that assertion is that the bank doesn't have on file any resolution showing that Anthony Yee could cash checks.

Our case will consist of at least five or six defenses any one of which should be sufficient to show that the liability is not on the bank. The first is, of course, that not only by a course of conduct and by

everything that the plaintiff in this case ever did the President Yee was authorized, [8] but they themselves cashed one of the checks, as will appear by the proof. If that doesn't, as a matter of law, once and for all and without any question of further proof establish the right of the bank to do what they themselves have done, to wit, cash a check, why there just isn't any law on the subject.

Second, if it is necessary, I think the proof will show that there was extreme negligence on the part of the Plaintiff in the issuance of these checks, and it is their own negligence that resulted in their loss, not the actions of the bank.

And, third, that in any event, I think the proof will show that it will be impossible for the plaintiffs to sufficiently sustain the burden that they have of showing, in the words of Mr. Saunders, the president was not authorized to cash the checks.

That is what the case is about, your Honor.

I have in front of me the old complaint, but I think it would be just as well to save the time.

Paragraph 1 is the formal allegation of incorporation and jurisdiction. That has been admitted. It was also admitted in the amended complaint.

Paragraph 2 alleges that the bank carries on a banking business and that they maintain——

The Court: That it is a national bank.

Mr. Cades: They have alleged in the amended complaint [9] that it is a national banking association. The actual jurisdiction in this case, your Honor, in this court arises not by virtue of the fact that my client is a national bank, but by reason

of the fact that plaintiff is a Delaware corporation. For purposes of jurisdiction of this court, your Honor will no doubt recall that my bank here is considered a local resident, but there is diversity alleged and we have not denied it, and the court does have jurisdiction under the diversity clause.

They have set up a new allegation, which I don't think is controvertible, that they have always had enough money in the bank to pay all checks that are drawn on the account. That is not denied. The amended answer will admit that specifically.

No. 3 is the——

Mr. Saunders: May I clarify that now, Mr. Cades, and ask that you admit at this time that paragraph 2 in the amended complaint is as we allege, namely, the only change being that plaintiff at all times had money on deposit in excess of the amounts of the checks involved and all other checks drawn by plaintiff on defendant bank when presented for payment.

The Court: Well, that is admitted.

Mr. Cades: That is admitted.

Mr. Saunders: That is admitted. [10]

Mr. Cades: Paragraph 3, the allegation of the drawing of the checks on the dates and the times admitted. That is admitted by our answer already on file.

Paragraph 4, that each of the checks was payable to Waipahu Auto Exchange, which is a corporation organized under the laws of the Territory. That has been admitted.

Paragraph 5 I would like to read, your Honor.

In both complaints the allegation is that “on or about the respective dates of said checks one Anthony Yee—” otherwise unidentified in the complaint “—took said checks and wrongfully, and without any right, authority or permission, endorsed each thereof in blank with the name of the payee named therein.

By way of answer, the allegations are denied, so that of course that is in issue. And it is further averred affirmatively that “at all relevant times Anthony Yee was president of Waipahu Auto Exchange, Limited, a Hawaiian corporation, and the payee named in each of the checks herein referred to; that the checks referred to were delivered by the plaintiff to Anthony Yee in his capacity as president of Waipahu Auto Exchange, Limited; that the acceptance of delivery by Anthony Yee, in his capacity as president of said corporation, permission of the corporation; that said Anthony Yee, in his capacity as president of said corporation, did have actual, implied and apparent authority to receive said checks and to negotiate and endorse the same [11] and said Anthony Yee, as president as aforesaid, did in fact negotiate and endorse said checks and each of them; that the defendant had no knowledge of any limitation upon the authority of said Anthony Yee.”

The Court: By saying that they were delivered to Anthony Yee, do you mean by that that they were delivered into his hand, or that they were sent by mail and that he was the recipient of them?

Mr. Cades: The proof will show, your Honor,

that they were physically delivered by the plaintiff to Anthony Yee, with whom the plaintiff did all the business.

Paragraph 6 of the complaint is that none of the checks were paid according to the terms of the check. That has been denied. That is put in issue by the answer.

Paragraph 7: On or about the respective dates of said checks, upon presentation thereof for payment, defendant wrongfully cancelled each said check and wrongfully deducted and withdrew the amounts of the checks from the account. That is the form in which that is alleged, and the answer says that the checks were cashed. It sets out that eight checks were cashed by the Bank of Bishop. All of these are set out in our answer, Your Honor. They will be identified. And that prior to the cashing of each of the checks, Anthony Yee was identified by an employee as being president of the Waipahu Auto Exchange, Limited, and at the time of the cashing [12] of each of said checks the defendant in good faith believed that said Anthony Yee, as president as foresaid, had authority to cash the checks, and relied upon representations made by Anthony Yee that he was cashing the checks for a corporate purpose, and had no knowledge of any limitation.

Further, we answer three of the checks were cashed by the Bank of Hawaii, and it is the same allegation on information as to what the Bank of Hawaii did, that they had them identified and cashed them.

The Court: What about the fourth one. There are twelve specified. Formerly there were but eleven. You have accounted for eleven.

Mr. Cades: There has been one added; and, if your Honor please, it is a little hard to know what the answer is. That is why we have reserved a right to file an amended answer. May I read the original answer. I think it will serve to clarify it. In the original answer we aver that in addition to the ones sued on, the plaintiff had also made demand upon us prior to the suit that we pay them \$1,537.

The Court: That is this check that has been added?

Mr. Cades: That is the check that has been added. We understood that as to that check that it got its money in full and therefore was not trying to get it again. I am not exactly sure what the facts will disclose, but for purposes of not interfering with the trial, I think it is one in a series [13] and we would deny that we wrongfully paid it. That is all we can do at this time, your Honor.

Mr. Cades: Going ahead to paragraph 8 they allege that prior to the commencement of this action, plaintiff tendered the checks to the defendant and demanded the repayment thereof. There is no dispute about tender and demand.

Paragraph 9 is an allegation that we owe them the money.

Mr. Saunders: May I ask if Counsel for defendant now admits that demand was made of defend-

ant that defendant repay the plaintiff the sum of \$17,726 and that said demand was refused.

Mr. Cades: Is he asking whether we admit the demand was refused?

Mr. Saunders: I am asking whether you admit the demand of this sum as represented by these checks and also that the demand was refused by the bank.

Mr. Cades: Yes, we admit we refused to pay the sums.

The Court: Are you ready to put on witnesses now?

Mr. Saunders: Yes, if your Honor please.

The Court: Just get your witness ready. Before that we will take a brief recess now.

(Recess had.)

LLOYD EDWARD HOLLOWAY, JR.

called as a witness on behalf of the plaintiff, being first [14] duly sworn, was examined and testified as follows:

The Clerk: Just sit down, please.

Direct Examination

By Mr. Saunders:

Q. Will you state your full name, please.

A. Lloyd Edward Holloway, Jr.

Q. What is your occupation?

A. Manager of the Honolulu branch, Federal Services Finance Corporation.

(Testimony of Lloyd Edward Holloway, Jr.)

Q. How long have you been in that occupation?

A. You mean in that capacity?

Q. In that capacity.

A. Since August 1, last year.

Q. That is 1949? A. Yes.

Q. And when did you come to the Territory of Hawaii?

A. January 15, last year, 1949.

Q. Where did you work when you first came to the Territory? A. Federal Services.

Q. What was your capacity at that time?

A. I suppose you would call understudy to Mr. Gillespie prior to taking over as manager.

Q. Were you sent down to take over the managership? A. That's correct. [15]

Q. And you were in a training period, or marking time, until Mr. Gillespie left; is that correct?

A. Correct.

Q. Mr. Gillespie was former manager of the Honolulu branch of Federal Services Finance Corporation? A. That is correct.

Mr. Saunders: If your Honor please, Counsel for the defendant has admitted these various documents. They are the banks statements rendered by Bishop National Bank, the defendant, to Federal Services Finance Corporation, the plaintiff, statements of the account that the plaintiff maintained in the defendant bank for the months January to May, inclusive, for 1949. I would like to introduce them into evidence as Plaintiff's Exhibit A-1, 2, 3, 4, and 5.

(Testimony of Lloyd Edward Holloway, Jr.)

The Court: Yes, I understood that the Bank admitted that in the answer.

Mr. Saunders: I have just shown them to them.

Mr. Cades: We have no objection to their going into evidence, your Honor.

The Clerk: Plaintiff's Exhibit A-1.

Mr. Saunders: A-1 would be January, 1949. A-2, February, 1949, and so forth.

The Clerk: A-1 is January.

The Court: To May? Including May?

Mr. Saunders: Including May, your Honor, 1949. [16]

(Thereupon, the documents above referred to were received in evidence as Plaintiff's Exhibit A-1, A-2, A-3, A-4, and A-5.)

Q. (By Mr. Saunders): Mr. Holloway, are you familiar, as manager of the local branch of Federal Services Finance Corporation, with the banking practices followed by your concern? A. Yes.

Q. And during the months January through May, 1949, were you familiar with the practices of the corporation in that regard?

A. Not entirely.

Q. In your capacity, as an understudy to the manager, you did have general familiarity with it, did you not?

A. That's correct.

Q. Since that time, since the months January through May, 1949, have you had occasion to re-examine the statements that the Bishop National Bank rendered to your corporation concerning the

(Testimony of Lloyd Edward Holloway, Jr.)

account of Federal Services Finance Corporation, Honolulu Branch, with the defendant bank?

A. I have.

Q. I show you Plaintiff's Exhibit A-1, the January statement, January, 1949, and ask you if you examined that prior to coming to court.

A. Yes. [17]

Q. Do you admit that all of the checks charged against your account were paid according to the order of the checks drawn?

A. Yes, with the exception of the one checked in red.

Q. And what is the date of that check, the date it was cashed?

A. January 21.

Q. And what is the amount of the check?

A. \$1,337.

Q. I show you Plaintiff's Exhibit A-2, being the February statement that the Bank rendered to Federal Services Finance Corporation, covering your account with Federal Services Finance Corporation, and have you examined this statement prior to coming to court?

A. Yes.

Q. And which, if any, charges against your account by reason of checks drawn there do you admit?

Mr. Cades: If your Honor please, I didn't want to object as to form. I am trying to hasten the thing. But I do object now. That is merely asking this witness for a conclusion of law. I think the testimony should be on question and answer what he did or what he said. Your Honor and ourselves will have to "thrash that out."

(Testimony of Lloyd Edward Holloway, Jr.)

Mr. Saunders: If your Honor please, we are merely trying to show that in this case the plaintiff is denying [18] that certain amounts were paid according to its order, and we are showing that by his perusal of these bank statements and to clarify which of these checks he is denying were paid according to his order, and we are showing this by check marks on these statements and identifying what those check marks represent.

The Court: Well, you claim that all these 12 checks were erroneously paid. That is denied. Why is it necessary to go over the bank statements to identify them. They have been sufficiently identified.

Mr. Saunders: We would like, if your Honor please, to show that they admitted the payment of these checks other than these twelve; therefore, the debtor-creditor relationship has been established as to these twelve, and that we have made a demand on these twelve.

The Court: They admit you made a demand and they refused your demand.

Mr. Saunders: We are also showing that the balance above the admitted amounts represents \$17,726, in other words, the amount admitted by our own people as being justifiable charges.

The Court: Well, it seems to me like that is a long, tedious way of getting around to get in the record something that is already in it in substance.

Mr. Saunders: This merely involves bank statements [19] for five months, and it only involves

(Testimony of Lloyd Edward Holloway, Jr.)

twelve individual check marks, which won't take long to get in the record, if your Honor please.

Mr. Cades: I think, your Honor, to save time, if the witness wants to put a red circle around the checks which identify them on the bank account, I think he can be asked to do it.

The Court: It seems to me that is about the best way. We will take up an hour here going through the rigmarole to identify each check.

Q. (By Mr. Saunders): Mr. Holloway, will you take these plaintiff's Exhibits A-1 through A-5 and draw a blue circle around each of the checks which were paid and which amounts you now dispute. (Witness writing.)

Have you completed that, Mr. Holloway?

A. Yes.

Mr. Saunders: If your Honor please, it is further confused a little bit by the fact that there is already a blue circle around one of these in ink. I would like to ask Mr. Holloway if they are further identified by red check marks before coming into court.

The Court: That accounts for all twelve checks?

Mr. Saunders: Yes. May I have permission to ask that question.

The Court: Yes. [20]

Q. (By Mr. Saunders): Mr. Holloway you have made circles around twelve checks, blue circles around amounts representing twelve checks paid by the bank during the months of January through May, 1949. Opposite, also, each of those charges is a red pencil check mark. Are those the checks

(Testimony of Lloyd Edward Holloway, Jr.)

that you now deny the bank paid according to your order? A. That's correct.

The Court: Will you ask this question, too: Were those the only checks that were issued during this five months, January to May, inclusive, by the plaintiff to the Waipahu Auto Exchange?

Q. (By Mr. Saunders): Will you answer the Court's question. A. No.

The Court: There were other checks issued?

The Witness: Yes, sir.

The Court: To the same payee?

The Witness: Yes, sir.

Q. (By Mr. Saunders): How many other checks, Mr. Holloway?

A. I couldn't say exactly. Approximately 5.

Q. Is it correct that there were two more checks?

Mr. Cades: Did he say "possibly 5"?

Q. Isn't it a fact, Mr. Holloway, that there were two more checks? [21]

Mr. Saunders: Counsel for the defendant has examined all the checks and I believe he will stipulate there were fourteen in all.

Mr. Cades: If your Honor please, I am in no position to stipulate that. They showed us various other checks and they showed us fourteen. I don't know what the facts are. I think that ought to be brought out by proof.

Q. (By Mr. Saunders): Mr. Holloway, did you show to the defendant all of the checks which your corporation drew payable to Waipahu Auto Exchange during those months? Isn't it a fact that they came and examined all of the records pertain-

(Testimony of Lloyd Edward Holloway, Jr.)

ing to Waipahu Auto Exchange that you had in your file? A. Yes.

Q. Didn't you at that time show them all of the checks you had that were made payable to Waipahu Auto Exchange and didn't those number fourteen in number?

A. I believe that is correct.

Q. And twelve of those fourteen are now the subject of this suit; is that correct?

A. That's true.

Q. Have you finished examining these checks?

A. Yes.

Mr. Saunders: Do you have any objection to their going into evidence?

Mr. Cades: No. [22]

Mr. Saunders: At this time, if your Honor please, defendant has no objection to the introduction in evidence of these checks which are enumerated in our amended complaint, being checks drawn by Federal Services Finance Corporation on defendant bank payable to Waipahu Auto Exchange, Limited, during the months January through May, Inclusive, 1949. We ask that they be introduced into evidence and marked Plaintiff's Exhibit B-1 through 12, and that the numbers 1 through 12 correspond with the numbers in our amended complaint. They are now in chronological order for the Court's convenience.

(Thereupon, the documents above referred to were received in evidence as Plaintiff's Exhibit B-1 through B-12.)

HONOLULU, T. H., January 21, 1949

NO. VH 9007

SEVEN DOLLARS AND 33 CENTS

DOLLARS \$1,337.00

WAI PAHU AUTO EXCHANGE, LTD.

MEMBER HONOLULU CHAMBER OF COMMERCE

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.

BY *[Signature]*
MANAGER HONOLULU BRANCH

1949 JAN 21 PM 3 10

*Wages Auto Bridge
By Anthony J. Per
President.*

(app)

EXHIBIT B-1

United States District Court
EXHIBIT B-1
Admitted 3-15-50

HOME OFFICE, WASHINGTON, D. C.

HOHÖLWÜ.T.H. February 10, 1940. VH 9316

SECONDA

STANDARD

DOLLARS 1500.00

FOR THE

of 148.

МАЙПАВУ AUTO EXCHANGE, LTD.

FEDERAL SERVICES FINANCE CORPORATION

CASH

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.

8Y

W. G. Zimmerman
MANAGER HONOLULU BR.

MANAGER/ADMINISTRATOR

Wainahu Auto Exchange Ltd.

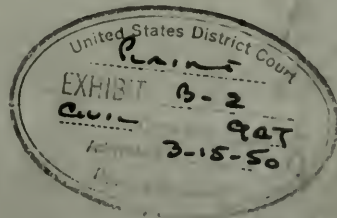
Зу

Anthony Lee
President.

President

OK
Dyap

62



EXHIBIT

3-2

٢٠٠

957

3-15-50

FEDERAL SAVINGS FINANCE CORPORATION



HOME OFFICE: WASHINGTON, D. C.

HONOLULU, T. H., February 17, 1949 No. VH 9435

TELEPHONE
SERVICES FINANCE

701-3370

DOLLARS \$ 1537.00

TO THE ORDER OF

WAIPAHU AUTO EXCHANGE, LTD.

FEDERAL SAVINGS FINANCE CORPORATION

WAIPAHU AUTO EXCHANGE, LTD.

BY *[Signature]*
MANAGER HONOLULU BRANCH

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.

5

55

[Signature]

WAIPAHU AUTO EXCHANGE LTD.

BY: *[Signature]*
PRESIDENT

701-3370

U.S. District Court
Pau...
B-3
907
3-15-50



FEDERAL SERVICES FINANCE CORPORATION

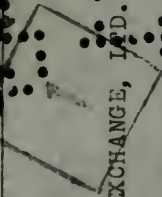
HOMEOFFICE WASHINGTON, D. C.

HONOLULU, T. H. March 22, 1949 No. VH 9919

FEDERAL
SERVICES FINANCE

★ ★ \$1500.00 DOLLARS \$1500.00

TO THE ORDER OF



WAI PAHU AUTO EXCHANGE, LTD.

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.

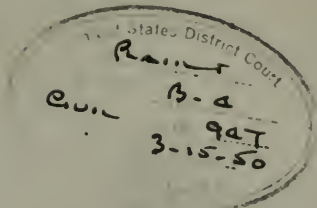
BY

W. J. Gallagher

MANAGER HONOLULU BRANCH

Wayman Auto Exchange
By Anthony J. J.
Manager

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 09-13-11 BY 60322 UCBAW/HAWAII



HOMER OFFICE, WASHINGTON, D. C.

HONOLULU, T. H. March 29, 1949 No. VH10017

FEDERAL
SERVICES FINANCE

\$1500.00

TO THE CREDIT OF

WALLACE AUTO EXCHANGE, LTD.

FEDERAL SAVINGS FINANCE CORPORATION

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.

BY

[Signature]
MANAGER HONOLULU BRANCH

2500

1000

5000

United States District Court
Honolulu
Quil B-3
Case No. 94T
3-15-60
Hawaii

Wangjahn Auto Ex. Co.
By Anthony J. J.
President.



HOME OFFICE: WASHINGTON, D. C.

No. VH10065

Honolulu, T. H.: March 31, 1949

FEDERAL
RESERVE BANK
SERVICES FINANCE

1437 DOLLARS \$ 1437.00

TO THE ORDER OF

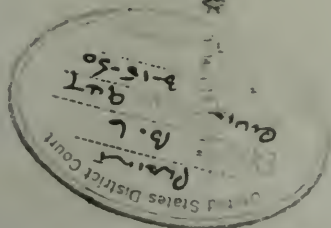
WAI PAHU AUTO EXCHANGE, INC.

FEDERAL SERVICES FINANCE CORPORATION

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.

BY *[Signature]*
MANAGER HONOLULU BRANCH

FORM 100-100-100



1437 DOLLARS \$ 1437.00

*Waipahu Auto & Td
My Courtesy for
President,*

[Signature]



FEDERAL SERVICES FINANCE CORPORATION

HOME OFFICE: WASHINGTON, D. C.

HONOLULU, T. H. APR 13 6 1949 No. VH10157

FEDERAL SERVICES FINANCE

\$\$\$ FIVE HUNDRED DOLLARS

DOLLARS \$ 1,500.00

TOTAL CHECK OF

WAIPAHU AUTO EXCHANGE

FEDERAL SERVICES FINANCE CORPORATION

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.

BY *W. J. [Signature]*

MANAGER HONOLULU BRANCH

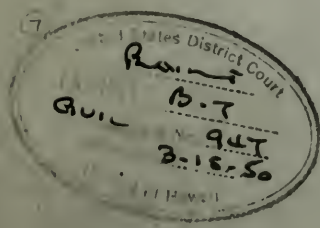
THIS CHECK IS NOT VALID UNLESS SIGNED BY THE MANAGER

50

*Waipahu Aut & Hdw
By Anthony J. [Signature]
President*

Anthony J. [Signature]

19169 59131



HOME OFFICE: WASHINGTON, D. C.

HONOLULU, T. H., April 13, 1948

NO. VH10248

FEDERAL SERVICES FINANCE

TO THE ORDER OF

1000 DOLLARS

DOLLARS & 1,000.00

WAIPAHAU AUTO EXCHANGE

FEDERAL SERVICES FINANCE CORPORATION

BISHOP NATIONAL BANK OF HAWAII

HONOLULU, T. H.

BY *[Signature]*

ASST. MANAGER HONOLULU BRANCH

Waipahu Auto Ex
By Country Year
Summit

270-200-1000

COLLECTION

DEPARTMENT OF REVENUE

United States District Court

6-8

947

947



HONOLULU, T. H. May 6, 1949

No. VH10576

FEDERAL SERVICES FINANCE CORPORATION

TO THE ORDER OF

WAIPAHU AUTO EXCHANGE, LIMITED

FEDERAL SERVICES FINANCE CORPORATION

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.

BY

W. J. Sullivan

MANAGER HONOLULU BRANCH

FORMS 4-10-48 USE PREVIOUS EDITIONS

(6)

*Waipahu Auto & the
Buy Anthony for
President*

2500

10481

10481

PAID
13-9
94T
2-15-50

No. VH10733

HONOLULU, T. H., MAY 17, 1949

FEDERAL
SERVICES FINANCE

* \$1,200.00

DOLLARS \$ 1,200.00

FEDERAL SERVICES FINANCE CORPORATION

MAI PAHU AUTO EXCHANGE, LIMITED

R.J.B.

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.

BY

Amehakehata
HONOLULU BRANCH

*Waipahu Auto Exchange
Anthony Yee
President*

*Identified by
Smy*

ORDER
ANY BANK, BANKER OR FRUIT CO.
ALL PRIOR ENDORSEMENTS GUARANTEED

MAY 17 1949 400

MAI PAHU AUTO EXCHANGE
HONOLULU, T. H., U.S.A.

United States District Court
Plaint
EXHIBIT B-10
Quartz Case No. 947
Assigned: 3-15-50
District of Hawaii



HOMEOFFICE WASHINGTON, D. C.

HONOLULU, T. H. May 19, 1949 No. VH10770

TO THE ORDER OF
SERVICES FINANCIAL * # 248020'S * DOLLARS \$ 2,480.00

TO THE ORDER OF

WAIPAHU AUTO EXCHANGE, LIMITED

TO CHANGE DEPT. 44

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.

BY

W. J. Gilligan

MANAGER HONOLULU BRANCH

1949-5-19-49 10 11-12

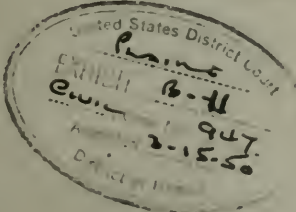
*Waipahu Auto Ex. Ltd
By Authority
Honolulu*

...

... IN THE ORDER OF
ANY BANK, BANKER OR TRUST CO.
... CHECKS MUST BE GUARANTEED

MAY 19 49 1007

BANK OF HAWAII, LTD.
HONOLULU, HAWAII, U. S. A.



FEDERAL SERVICES FINANCE CORPORATION

HOE OF AID: WASHINGTON, D. C.

HONOLULU, T. H. May 19, 1949 No. VH10774

FEDERAL SERVICES FINANCE CORPORATION
TO THE ORDER OF
\$ 1495.00 DOLLARS \$ 1495.00

3

WAIPAHO AUTO EXCHANGE, LIMITED
EXCHANGE DEPT. 14
FEDERAL SERVICES FINANCE CORPORATION

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.
BY *W. J. Gilligan*
MANAGER HONOLULU BRANCH

FORM 1-1-48 (10-10-48)

*Waipaho Auto & Tel
Pay Anthony Lee
Omond*

PAID TO THE ORDER OF
BANK, BANKER OR TRUST CO.
THIS CHECK IS GUARANTEED
MAY 19 1949 1007
BANK OF HAWAII
HONOLULU, HAWAII, U.S.A.

*Pay to the order of
B-12
94T
2-15-50*

(Testimony of Lloyd Edward Holloway, Jr.)

Mr. Saunders: We have no further questions of Mr. Holloway at this time.

Mr. Cades: What were the exhibit numbers, Mr. Clerk, please?

The Clerk: B-1 to B-12.

The Court: The first one is A, is it?

The Clerk: A is the bank statements.

The Court: Yes. And there are B's.

The Clerk: Photostatic checks. B series.

Mr. Saunders: As I understand it, B-1 through B-12 you can just run down the checks listed in our amended complaint and those are the exhibits. [23]

Cross-Examination

By Mr. Cades:

Q. Mr. Holloway, do you have the other two checks with you that were shown to us in the examination of your files? A. No.

Mr. Saunders: I have them in my possession.

(Handed to Counsel.)

Q. (By Mr. Cades): I show you check of February 2, 1949, issued by Federal Services Finance Corporation to Waipahu Auto Exchange, Limited; on the back of it is the endorsement for deposit Waipahu Auto Exchange, Limited, by F. H. Shintaku. I will ask you whether that is one of the checks you referred to in your direct examination, your direct testimony.

A. That would be one of the fourteen checks.

Q. That is one of the fourteen.

HOME OFFICE: WASHINGTON, D. C.

HONOLULU, T. H., February 2, 1949 No. VH 9186

FEDERAL
SERVICES FINANCE

\$1337.00

DOLLARS \$1337.00

WAIPAHU AUTO EXCHANGE LTD. FEDERAL SERVICES FINANCE CORPORATION

Bozinger

MANAGER, HONOLULU BRANCH

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.

For Deposit
Waipahu Auto Exchange Ltd.
By F. H. Shintake

PAY TO THE ORDER OF
ANY BANK, BANKER OR TRUST CO.
ALL PRIOR ENDORSEMENTS GUARANTEED

FEB 3 1949

59-602 BANK OF HAWAII

HONOLULU, HAWAII, U.S.A.

PAY TO THE ORDER OF
ANY BANK, BANKER, OR TRUST CO.
ALL PRIOR ENDORSEMENTS GUARANTEED

FEB 5 1949

BANK OF HAWAII
WAIPAHU BRANCH

United States District Court
District of Hawaii
EXHIBIT No. 1
Case No. 3-15-55
Admitted

(Testimony of Lloyd Edward Holloway, Jr.)

Q. (By Mr. Cades): Mr. Holloway, I show you also a Federal Services Finance Corporation check drawn on the Bishop Bank, dated May 9, 1949. It is identified as VH 10605, is in the amount of 1445, purports to be endorsed on the back by Waipahu Auto Exchange, Limited, by Anthony Yee, President, shows under there Deposit to the account of Federal Services Finance Corporation. I will ask you whether that is the other check you refer to in your direct examination.

A. That would be the other check.

Mr. Cades: I offer this in evidence, your Honor.

Mr. Saunders: Your Honor, may I make the same objection on the same grounds as on the check just presented prior to this.

The Court: Overruled. It may be received.

The Clerk. Defendant's Exhibit No. 2.

(Thereupon, the document above referred to was received in evidence as Defendant's Exhibit No. 2.)

HONOLULU, T. H. MAY 2, 1949 NO. VH10605

TO THE CREDIT OF

*** I 455 DOLLARS ***

\$ 1,455.00

MAIPAHU AUTO EXCHANGE, LIMITED

FOUR SEVEN FINANCE CORPORATION

BISHOP NATIONAL BANK OF HAWAII
HONOLULU, T. H.

Admitted March 15, 1950.

BY

Spaulding
MANAGER HONOLULU BRANCH

26A

*Vaigala Anti 34 the
by Anthony per
Brenner*

DEBIT ONLY.
ACCOUNT OF
FEDERAL RESERVE FINANCE CORP.

DEFENDANT'S EXHIBIT NO. 2

(Testimony of Lloyd Edward Holloway, Jr.)

Q. (By Mr. Cades): Mr. Holloway, you were understudying Mr. Gillespie in the early part of 1949, I think you testified.

A. That's correct.

Q. Do you remember the date that you arrived in the territory. [26]

A. January 13, 1949.

Q. January 13. And did you go to the place of business of the Federal Services Finance Corporation every day?

A. That is true.

Q. You knew Mr. Yee?

A. Yes.

Q. During that time you were understudying Mr. Gillespie you had access to all of the records of the corporation?

A. That's correct.

Q. I ask you to look at Exhibit No. 2, which is the check of May 9, 1949, and I will ask you whether it isn't a fact that Mr. Yee cashed that check in the offices of Federal Services Finance Corporation.

A. That's correct.

Q. When Mr. Yee cashed the check, what did the Federal Services Finance Corporation do with the check? Did it just cancel it, or what?

A. It was deposited to our account.

Q. It was deposited to your account in the Bishop Bank?

A. Yes.

Q. And the purpose of that deposit was to show that a payment had been made under the check to the Corporation; isn't that right?

A. Payment had been made to Anthony Yee. [27]

Q. Just listen closely to the question again. When the check was paid by the delivery of cash to Anthony Yee, you then deposited it to the account,

(Testimony of Lloyd Edward Holloway, Jr.)
to your account, the Federal Services Finance Corporation, in the Bishop Bank; that's correct, isn't it?

A. Yes.

Q. What was the purpose of that deposit in the Bishop Bank account?

A. What was the purpose of depositing the check?

Q. Yes. It had already been paid. It was your own check, and you nevertheless put it through the bank account. What was the purpose of that?

A. To account for the cash paid to Anthony Yee.

Q. To account for the cash paid to Anthony Yee. And when that check was cashed, you cashed it because you were making payment to Anthony Yee and not to the Corporation?

A. Payment was made to Anthony Yee.

Mr. Saunders: Your Honor, that calls for a conclusion of law, not a question of fact on the part of the witness.

Mr. Cades: I am trying to ferret the truth out of the witness, your Honor, as to what happened in this transaction.

The Court: Proceed.

Q. (By Mr. Cades): You deposit through your account all [28] checks that are received, do you not?

Mr. Saunders: If your Honor please, may I ask that Counsel step down so I can hear and see what the witness is saying.

Mr. Cades: I beg your pardon.

Q. (By Mr. Cades): As a matter of fact, didn't your Corporation want to have a check record of

(Testimony of Lloyd Edward Holloway, Jr.)

the fact that you had disbursed—May I see the check a minute (Handed to Counsel)—had disbursed the amount of \$1455 to the Waipahu Auto Exchange, Limited? A. Yes.

Q. You have voucher checks, don't you—Do you know what voucher checks are? A. Yes.

Q. Do you have the voucher that was attached to Exhibit No. 2, that was originally attached to this check?

A. You mean the duplicate of that check, the carbon?

Q. The carbon showing the voucher.

A. Yes.

Q. Would you produce it, please. I think you have it over here. A. We don't have it.

Mr. Saunders: If your Honor please, I am going to object to this entire line of questioning as going beyond the scope of cross-examination. We have merely put Mr. Holloway [29] on for the purpose of putting on certain documents and denying certain payments. If Mr. Cades wants to call Mr. Holloway as his own witness, he can do that, but I think at the present time the proper procedure would be for us to complete our case.

The Court: Well, I agree with you there, but since he has started on this, I assume he is just about through, and after all it is just a matter of saving time at the end. I do admit it is a slight interruption to your procedure.

Q. (By Mr. Cades): I show you, produced from the records of your Corporation, what pur-

(Testimony of Lloyd Edward Holloway, Jr.)

ports to be a duplicate of a voucher check for Check No. VH 10605 and ask you whether you can identify that as a duplicate of a voucher check issued at the time that Exhibit No. 2 was issued.

A. Yes, this is a duplicate of that check.

Q. Before I introduce it, will you state what the check was issued for to the Waipahu Auto Exchange, Limited?

A. What the check was issued for?

Q. Yes.

Mr. Saunders: If your Honor please, I object to this entire line of questioning again. Same objection: It is irrelevant and immaterial what went on between Waipahu Auto Exchange—

The Court: Direct your objection to the particular [30] question that is before the Court.

Mr. Saunders: I object to the particular question, if your Honor please, in that it is irrelevant and immaterial.

The Court: It does appear to me to be irrelevant. I don't see what the connection there is, what the check was issued for. We haven't inquired into what other checks were issued for.

Mr. Cades: If your Honor please, if I may show the relevancy, the record here will show that the duplicate of the voucher check shows that this was issued as the proceeds of a contract, Philman Laboratory, Ltd., which was sold to the Federal Services Finance Corporation. The purpose of this line of examination is highly relevant. The only purpose that the Federal Services Finance Corporation could possibly have had in endorsing and in

(Testimony of Lloyd Edward Holloway, Jr.)

depositing their own check, which was paid, would be in order to have a record through their bank account that Waipahu Auto Exchange——

The Court: That is already admitted by the witness.

Mr. Cades: But I want to show, your Honor, it was issued in the orderly course of business for the purpose of a contract of sale. Then we will show later, your Honor, by way of connecting, that every other check was issued for exactly the same purpose for a routine business transaction. The result of that testimony will be to show the “proof of the pudding” in our Answer, that the bank did exactly what [31] they themselves did. They dealt with Anthony Yee as he was, as he was president of the corporation, and the loss couldn’t be imposed upon the bank for doing what they themselves have done. That is the relevancy. I will make it as short as I possibly can. I just want to get in the evidence. Do you have any objection?

Mr. Saunders: We object to this as cluttering up the record and not being relevant to the issues. The issues are plain and simple: Did the bank pay according to the order or not according to the order and to some unauthorized person in an unauthorized manner? This has no connecting up with misleading the bank. It might tend to show, although I don’t believe it does, that there was negligence on behalf of the plaintiff in issuing the check, but there is no showing there was any negligence or misleading the bank in cashing the checks. The

(Testimony of Lloyd Edward Holloway, Jr.)

bank at all times had it within its power to avoid any liability.

The Court: Is it your plan to go through all these checks?

Mr. Cades: With this witness, your Honor, all I have in mind is to show the voucher check, get this in evidence. The very statement that Mr. Saunders made shows the relevancy. This is not introduced for the purpose of showing negligence. That is apparent.

The Court: I am asking you: Is it your intention [32] to go through at this time with this witness all of the checks and their vouchers?

Mr. Cades: It is my purpose——

The Court: Or just this one?

Mr. Cades: It is my purpose with this particular witness while he is on the stand to take every check that is contested and show exactly what happened, why it was issued.

Mr. Saunders: If your Honor please, I make the same objection that I made a little earlier, that that is properly a part of the defendant's case and is not within the scope of the cross-examination.

The Court: I think that is true. You had better get through with the witness on cross-examination and call him on direct.

Mr. Cades: Very well, then, in view of that ruling, your Honor, I will merely offer in evidence with Exhibit 2 the counterpart of it, which is the voucher showing the purpose for which it was issued.

(Testimony of Lloyd Edward Holloway, Jr.)

Mr. Saunders: If your Honor please, we make the same objection as we did on the offering of the check and make the further objection that this is offered on cross-examination, which is an improper means of offering any exhibit.

The Court: As a proper accompaniment of Exhibit 2, it is admitted. [33]

Mr. Saunders: What was the ruling, your Honor?

The Clerk: It is admitted. Exhibit 2-A.

(Thereupon, the document above referred to was received in evidence as Defendant's Exhibit 2-A.)

DEFENDANT'S EXHIBIT 2-A

H7633

Federal Services Finance Corporation

Home Office: Washington, D. C.

Honolulu, T. H. May 9, 1949

No. VH 10605

Pay Dollars \$1,455.00

To The Order Of

Waipahu Auto Exchange, Limited

Federal Services Finance
Corporation

By.....

Asst. Manager Honolulu
Branch

Bishop National Bank of Hawaii

Honolulu, T. H.

Detach Before Depositing Check

(Testimony of Lloyd Edward Holloway, Jr.)

In Settlement of Proceeds of Contract—Philman
Laboratory, Ltd.

Charge

Check: \$1,455.00

Admitted March 15, 1950. [34-A]

Mr. Saunders: If your Honor please, we will excuse Mr. Holloway.

Mr. Cades: Just a minute. I am not finished. I still have some cross-examination.

Q. (By Mr. Cades): Mr. Holloway, you testified on direct examination that you had occasion to re-examine these bank statements. Would you mind telling us when you had occasion to re-examine the bank statements.

A. You mean for the period in question?

Q. That's right.

A. They were examined in detail today.

Q. Today. You are familiar, you said, with the so-called banking practices followed by your concern. Isn't it the practice of your concern to examine your bank statements when the bank statements come into the corporation at the end of each month? A. Yes.

Q. Who is the person who makes that examination?

A. You mean the name of the person, or job?

Q. Yes, who in your organization makes the examination? A. Mrs. Joyce Kishi. [34]

(Testimony of Lloyd Edward Holloway, Jr.)

Q. Joyce Kishi. What does she do it for? For purposes of reconciling the bank account?

A. That's correct.

Q. Does she make an examination of each of the vouchers to see that they have been properly returned?

A. She does now.

Q. She does now. Was your practice changed after the Yee incident?

A. Yes.

Q. Well, do you know when you began examining the bank statements to find out whether the vouchers were all proper and in order?

A. After this was uncovered.

Q. After this was uncovered. Prior to that time you made no examination of the vouchers? It was not customary in your firm to make an examination of the vouchers returned with the bank statement?

A. Just for purposes of reconciliation.

Mr. Saunders: If your Honor please, could we have that clarified? I don't think the witness knows what he means by "vouchers."

Q. (By Mr. Cades): Do you know what vouchers are that are returned with the bank statement?

A. I am not entirely familiar with that term.

Q. With the bank statement the returned checks are [35] sent back, are they not?

A. Yes.

Q. It was not the practice, I understand, of your Company up until quite recently to examine the returned checks; is that right?

Mr. Saunders: Am I to understand, your Honor,

(Testimony of Lloyd Edward Holloway, Jr.)
that Counsel means "check" when he says "voucher"? Is that what the witness is to understand?

Mr. Cades: I rephrased the question now substituting "bank checks" for "vouchers." I think it is quite apparent. This is a very intelligent witness. He is the head of the firm.

Would you mind reading the question.

(Question read.)

The Witness: You mean examine the endorsements?

Mr. Cades: Yes.

A. That is true.

Q. (By Mr. Cades): Well, was it your custom to do any more than reconcile a bank account by taking the balances? A. No.

Q. Is Mr. Gillespie available in the Territory as a witness? A. No, he isn't.

Q. He is not available. Where does he live now?

Mr. Saunders: If your Honor please, this is a [36] large court room and if Counsel has a tete-a-tete up there, we just can't hear.

Mr. Cades: I am sorry. I thought you could hear my voice.

Mr. Saunders: I can hear yours, but I can't hear the witness because he is speaking just to you.

Mr. Cades: Will you talk out loud, please.

The Witness: Yes. You asked if Mr. Gillespie was available in the Territory as a witness.

Mr. Cades: Yes, and you said "no."

The Witness: No.

(Testimony of Lloyd Edward Holloway, Jr.)

Q. (By Mr. Cades): And where is his present address? A. Washington, D. C.

Q. And how long was he manager of this concern?

A. From 1937 to 1941, and from 1946 until July of 1949.

Q. And you were sent down here—Was your replacing Mr. Gillespie accountable for by this so-called Yee incident, or did it have nothing to do with that? A. Nothing to do with it.

Mr. Saunders: Mr. Holloway—

Mr. Cades: Just a minute. If your Honor please, I would like leave to make this witness my own and pursue the matter further so that he can be cross-examined. I think it would save time to continue while he is on here. [37]

Mr. Saunders: If your Honor please, I don't think that would save time at all. We have witnesses in court who are waiting, and if we go into this entire line of inquiry that is properly a part of defendant's case, then we are going to be in court all day and our witnesses will be waiting.

The Court: I should tell you now I have got to get away at half past 11 and I can't resume this case until tomorrow morning at 10, so you may make the best of your time. In the face of the objection I can't allow it.

You are through with the witness now?

Mr. Saunders: No, your Honor.

(Testimony of Lloyd Edward Holloway, Jr.)

Redirect Examination

By Mr. Saunders:

Q. What does Mr. Gillespie do now, Mr. Holloway? A. He is vice president of the firm.

Q. And his offices are in Washington?

A. Yes.

Q. Where is the main office of your Corporation?

A. You mean the exact address?

Q. Where is it located, what general locality?

A. Washington, D. C.

Q. And is that where Mr. Gillespie is now?

A. Yes.

Q. Are you familiar with the exact procedure followed [38] by Mrs. Joyce Kishi—

Mr. Saunders: Or, let me reframe that.

Q. (By Mr. Saunders): Are you familiar with the procedure that Mrs. Joyce Kishi followed during the months January through May, 1949, in handling the return bank statement and the return checks? A. Yes.

Q. What would she do upon receiving the bank statement, together with the returned checks?

A. Just record the outstanding checks for purposes of reconciliation of the statement.

Q. Did she compare the amounts of the checks drawn against the amounts shown in the balance of the statement? A. Yes.

Q. Did she check the signature of the drawer; in other words, did she check the signature of the one who signed the check on behalf of Federal Services Finance Corporation?

(Testimony of Lloyd Edward Holloway, Jr.)

Mr. Cades: If your Honor please, I will object to that. If there is to be testimony about what she did or didn't do, specifically, except for the general practice, I think we ought to have the young lady here so we could cross-examine.

The Court: Well, of course she would be the best witness as to what she did.

Q. (By Mr. Saunders): Mr. Holloway, whenever a check [39] is issued by Federal Services Finance Corporation, do you as a matter of course run that through the bank account even though you paid cash for the check? That is to say, if one of your employees cashes a check drawn by you and payable to some payee, do you still run that through your account in the bank? A. Yes.

Q. Is the purpose of that to show what has happened to each of your checks? A. Yes.

Mr. Saunders: I have no further questions.

Mr. Cades: I have no further questions.

The Court: Your checks are all numbered in precise sequence, are they?

The Witness: Yes, sir.

The Court: So that you account in your records for every check issued?

The Witness: Yes, sir.

The Court: Suppose one becomes destroyed; mutilated, typed wrongfully, what do you do about that?

The Witness: Well, if we have been notified the check hasn't been received——

The Court: No, I mean in your own office before issuing.

(Testimony of Lloyd Edward Holloway, Jr.)

The Witness: It is canceled. [40]

The Court: Well, it is just destroyed and you begin with the next number?

The Witness: No, sir, we retain the check, but it is marked canceled.

The Court: These checks don't have any stub attached to the check, so you haven't any stub record; the record you have is this separate sheet, is it?

The Witness: Yes, sir.

The Court: And are these numbered the same as the checks are?

The Witness: Yes, sir.

The Court: The checks and these vouchers here come to you in a book form, do they?

The Witness: No, sir, they are loose, triplicate.

Mr. Saunders: Isn't it a fact, Mr. Holloway, that the vouchers, that is to say, the duplicate of the check, are kept in your files at all times and only the original goes through the bank?

The Witness: That's correct.

Mr. Saunders: We have no further questions of Mr. Holloway. If your Honor please, we have one witness to identify some documents. It would only take him three minutes.

The Court: All right, put him on.

(Witness excused.)

Mr. Saunders: Mr. Yokono. [41]

TAKESHI YOKONO

called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: Just sit down, please.

Direct Examination

By Mr. Saunders:

Q. Will you state your full name.

A. Takeshi Yokono.

Q. Mr. Yokono, were you connected with the Waipahu Auto Exchange, Limited, during its corporate existence? A. Yes.

Q. When was it incorporated?

A. Latter part of November.

Q. Of what year? A. 1948.

Q. 1948? A. Yes.

Q. And when was it dissolved?

A. End of December, 1949.

Q. Was that a Hawaiian corporation?

A. Yes.

Q. Were you one of its incorporators?

A. Yes.

Q. I show you what purports to be the by-laws of the corporation, of that corporation, executed by the incorporators, [42] and ask you if you have seen it before. A. Yes.

Q. I show you what purports to be your signature and ask if that is your signature.

A. Yes.

Q. Where did you sign this document?

(Testimony of Takeshi Yokono.)

A. At our shop office.

Q. At your shop office. Where is that located?

A. Waipahu, junction of Farrington Highway and Depot Road.

Q. Who esle was present at the signing of this document?

A. Anthony Yee, Shintaku, and Pang.

Q. When you say 'Shintaku and Pang,' whom do you have reference to? What are their full names?

A. Kay Pang and Fred Shintaku.

Q. Can you identify the other signatures appearing on this document?

A. Yes.

Q. Whose signatures are they?

A. This is Anthony Yee's signature. This is Fred Shintaku's signature, and this is Kay Pang's signature, and this is my signature.

Mr. Saunders: Indicating the four signatures at the foot of the document.

Q. (By Mr. Saunders): Was this executed before or after incorporation?

Mr. Cades: If your Honor please, I think that this is not the best evidence. We didn't object because we thought it would save time, and we know your Honor is in a hurry. If there is any question about these being the by-laws, or the propriety of them, the best evidence is to bring in corporate record and not oral testimony. We object on the ground this calls for a conclusion as to the date of incorporation, and the best evidence for that is the proof of incorporation by the official records.

(Testimony of Takeshi Yokono.)

Mr. Saunders: We will show by the testimony of the witness that this is the official record of the corporation.

Mr. Cades: May I have the question. The reporter will read the question. Your Honor will see the propriety of the objection.

(Question read.)

Mr. Cades: Proof of the date of incorporation is not anything for this witness to testify about.

Mr. Saunders: He has already testified, if your Honor please, and it is in the record without objection.

Mr. Cades: It was in the latter part of November. Do you want your case to stand or fall on whether that statement is true or not? That is only a general statement [44] and inaccurate. The best evidence ought to be adduced. I didn't, by not raising an objection, agree that I wouldn't insist on the best evidence forever.

Q. (By Mr. Saunders): On what day did you sign that document, Mr. Yokono?

A. I don't know the exact date.

Q. I call your attention to the date, 23rd day of November, A.D. 1948, just above your signatures.

A. Yes.

Q. Is that the date it was signed? A. Yes.

Q. Were there any other by-laws adopted for Waipahu Auto Exchange? A. I do not recall.

Q. Do you think there were any?

A. There might have been, I don't know.

(Testimony of Takeshi Yokono.)

Q. Were these the by-laws under which the corporation acted? A. Yes.

Q. This is the original that was signed by all the parties? A. Yes.

Mr. Saunders: If your Honor please, I offer this in evidence as Plaintiff's Exhibit C, being the by-laws of Waipahu Auto Exchange, Limited. [45]

Mr. Cades: May I examine the witness about this document, your Honor?

Mr. Saunders: May we have a ruling?

The Court: Well, he wants to examine him first.

Voir Dire Examination

By Mr. Cades:

Q. Yokono, as a matter of fact, wasn't Herbert Lee, an attorney in Honolulu, one of your incorporators? A. I didn't get the question.

Q. Do you know what an incorporator is, of a corporation? A. I don't know.

Mr. Saunders: Would you ask the witness to speak up?

The Court: Well, you answered that you were one of the incorporators.

Q. (By Mr. Cades): You know you are one of the incorporators, don't you? A. Yes.

Q. The people that start the company.

A. Yes.

Q. And sign the original papers. A. Yes.

Q. Wasn't Herbert Lee, an attorney, one of the incorporators? [46]

A. I remember his signing it, too.

Q. But on this paper which has been submitted,

(Testimony of Takeshi Yokono.)

is there any signature of Herbert Lee? A. No.

Q. No. Did you ever have a meeting of the incorporators in which any action was taken about the adoption of by-laws? A. Yes.

Q. Where was it? A. At our shop office.

Q. Who was present at the meeting?

A. Anthony Yee, Fred Shintaku, Kay Pang, and myself.

Q. The meeting was held at the office?

A. Yes.

Q. Had any notice been given of the meeting?

A. All—Yes.

Q. What? By telephone?

A. No, we used to get together all the time, so we had our meeting.

Q. Just had an informal meeting?

A. You mean for this?

Q. Yes. A. No.

Q. Well, describe the meeting. What happened at the meeting?

A. Yee called a meeting and all of us were present, [47] four of us, and he brought this by-laws and incorporation papers.

The Court: Who did?

The Witness: Yee. Anthony Yee brought the papers, and we read through all those articles and discussed several points, and we signed the paper.

Q. (By Mr. Cades): You discussed several points and signed the paper. Did anybody take any minutes of the meeting?

A. I don't think so at that time.

Q. Is there any record anywhere that such a

(Testimony of Takeshi Yokono.)

meeting was held? Does the corporation have any record of such a meeting? A. No.

Q. No, and do you want this Court—Do you understand that you were incorporated on November 23, the date on which this was signed; is that what your testimony is, that you were incorporated on that date?

A. I wouldn't know the exact date, but I see on the bottom there it says November 3.

Q. November 23.

A. Twenty-three. So I guess it must have been that date.

Q. But you haven't any personal knowledge as to when this company became incorporated, have you? [48] A. You mean the exact date?

Q. Yes. A. No, sir.

Q. You don't know. So that this paper may have been signed before incorporation or after incorporation, as far as you know? A. No, sir.

Q. And you don't know who all the incorporators were?

A. I would know, because I was in it, too.

Q. You wouldn't know? A. I know.

Q. Oh, you do know. And who are the incorporators, then?

A. Anthony Yee, Fred Shintaku, Kay Pang, Takeshi Yokono.

Q. And Mr. Lee? A. I don't know.

Q. You don't know.

Mr. Cades: If your Honor please, we object to the introduction of these as the by-laws of the cor-

(Testimony of Takeshi Yokono.)

poration on the ground that there is no proof as to when the corporation had been formed. There is no proof—in fact, there is a definite statement by this witness that he doesn't know who all the incorporators are. There is no proof of any corporate—at least no record of any corporate meeting properly called [49] or properly held at which the by-laws were adopted. In fact, all there is is a statement that four people came together on November 23 and signed a document purporting to be by-laws.

In the absence of that proof, I don't think that would stand as the by-laws of the Company.

The Court: The clerk will mark the document for identification until we consider it at a later time.

The Clerk: Plaintiff's No. 1, for identification.

(Thereupon, the document above referred to was marked Plaintiff's No. 1, for identification.)

The Court: I am sorry that I have to adjourn this hearing until tomorrow morning at 10 o'clock.

Mr. Cades: May I ask, your Honor, will we go all day tomorrow?

The Court: Yes, if necessary.

(Thereupon, at 11:40 a.m., March 15, 1950, an adjournment was taken until March 16, 1950, at 10:00 a.m.) [50]

March 16, 1950

The Clerk: Civil No. 947, Federal Services Finance Corporation vs. Bishop National Bank of Hawaii at Honolulu, for further trial.

(Testimony of Takeshi Yokono.)

Mr. Saunders: Ready for the plaintiff, your Honor.

Mr. Cades: Ready for defendant.

TAKESHI YOKONO

resumed the stand and testified further as follows:

Mr. Cades: May I say, your Honor, that you have before you the question of ruling on the admissibility of a purported set of by-laws.

I would like, before your Honor rules on that matter, to call your attention to the Territorial Statute which provides what is necessary in order to have corporation by-laws.

First of all, the Statute provides that "No person dealing with the corporation shall be charged with constructive notice of the by-laws." That provision appears, your Honor, in Section 8335 of the Revised Laws of Hawaii, 1945.

There are two ways provided in that section by which the by-laws may be adopted. One is a regular or special meeting called and held for the purpose, notice of which shall have stated that the purpose of the meeting is to consider the adoption of by-laws. That obviously was not done.

The other is: The by-laws may be adopted at the incorporation [51] by the signers of the articles of association. This man doesn't know, and there has been no proof of who were the signers of the association. On the evidence that is before your Honor there is no basis upon which this may be admitted

(Testimony of Takeshi Yokono.)

even for what it is worth. We will argue about what they are worth as a matter of law if they are the by-laws of the corporation, but there certainly has been no proof, if they are.

Mr. Saunders: If your Honor please, we are willing to by-pass for the moment the question of admitting this purported set of by-laws in evidence. If Counsel for the defendant will complete the cross-examination of Mr. Yokono, we have Mr. Herbert Lee to call to the stand.

Mr. Cades: Do you want to put Mr. Lee on?

Mr. Saunders: It is perfectly all right for you to finish your cross-examination of Mr. Yokono first.

Mr. Cades: Then as the record stands, there is an offer of this document in evidence. I take it it is now withdrawn. This was offered in evidence, your Honor.

Mr. Saunders: We will withdraw it for the moment, your Honor.

The Clerk: It was marked for identification.

Mr. Cades: But it was offered in evidence. Are you finished with your direct of this witness? I was merely cross-examining him on the offer. They have withdrawn the [52] offer.

Mr. Saunders: If your Honor please, we are through with our direct, reserving the right, however, to recall him for another purpose, depending upon whether this by-law does get into evidence.

The Court: All right.

Mr. Cades: All right.

(Testimony of Takeshi Yokono.)

Cross-Examination

By Mr. Cades:

Q. Mr. Yokono, you were treasurer of this company, weren't you? A. Yes, sir.

Q. Who was president? A. Anthony Yee.

Mr. Saunders: If your Honor please, I object to these questions as not being within the scope of the direct examination.

Mr. Cades: If your Honor please, I think we ought to get that settled once and for all. They put a witness on. He was put on to prove authority. I want to go into the question of authority.

Mr. Saunders: He was not put on to prove authority. He was put on for the limited purpose of testifying to signatures on the document purporting to be the by-laws of Waipahu Auto Exchange and for that limited purpose only. [53]

The Court: That brought in the question of authenticity of the by-laws, didn't it?

Mr. Saunders: If your Honor please, "Under the American rule," as stated in 58 American Jurisprudence, under Witnesses, 637, "a witness called merely to identify letters, statements, or other instruments, may not be cross-examined regarding other matters in issue in the cause."

When we put in these by-laws, if they are admissible, we are going to let the by-laws stand, and we are not binding ourselves in any way by the testimony of this witness. He was not our witness for anything other than the purpose of identifying the signature on the purported by-laws.

(Testimony of Takeshi Yokono.)

The Court: All right, the witness is excused.

Mr. Saunders: I didn't hear your Honor's ruling.

The Court: I say, with that understanding, the witness is excused. I thought that was all you wanted to ask him about. You may call him again at any time.

Mr. Cades: Well, if your Honor please, I didn't quite understand that ruling. On direct examination he testified that he was connected with this Waipahu Auto Exchange. He testified about the incorporation and he testified concerning a meeting that was held at their office in connection with the by-laws.

The Court: Yes.

Mr. Cades: Now, I think that no matter how limited the scope of cross-examination may be, I certainly [54] have a right to probe as to everything he touched on on his direct examination. That is the universal law and it is certainly the rule of the Federal court. I understand that the burden of the plaintiff's case is an extremely technical one, to show that technically the bank has got to pay some money over. This is a technicality that I don't think will hold. The witness has been put on. My questions are going to be limited to matters he referred to in direct examination.

The Court: Very well. The ruling heretofore made, then, is set aside and you may go ahead.

(Testimony of Takeshi Yokono.)

Cross-Examination

(Continued)

By Mr. Cades:

Q. Mr. Yokono, you said you were the treasurer of the Company; is that right?

Mr. Saunders: I object, your Honor; he is assuming a fact not in evidence. Mr. Yokono has not testified he was treasurer.

Mr. Cades: I will withdraw it.

Q. (By Mr. Cades): Mr. Yokono, were you treasurer of the Company?

Mr. Saunders: If your Honor please, I object to the question as not being within the scope of the direct examination.

The Court: Overruled.

A. Yes, sir. [55]

Q. (By Mr. Cades): From the beginning of the Company until its dissolution? A. Yes, sir.

Q. Who was president of the Company during that time? A. Anthony Yee.

Q. Is Anthony Yee the same Anthony Yee that is purported to have signed the by-laws, which is Exhibit 1, for identification? Is it?

The Clerk: That's right.

Q. Exhibit 1, for identification. A. Yes.

Q. That is the same Anthony Yee? A. Yes.

Q. And that same Anthony Yee was also general manager of the Company, wasn't he?

Mr. Saunders: If your Honor please, I object to this entire line of questioning as not being within the scope of the direct examination.

(Testimony of Takeshi Yokono.)

The Court: Overruled.

A. He wasn't the general manager.

Q. (By Mr. Cades): You say he was not managing the Company? A. No.

Q. Didn't he manage the Company in fact?

A. No, we had Shintaku as general manager.

Q. Mr. Yee was the president of the Company?

A. Yes.

Q. But was not the manager? A. No.

Q. Well, when you say "no," do you mean that he was not, that he didn't in fact act as manager of the Company?

A. No. Shintaku was manager there, the way I understood.

Q. That is what you understand?

A. We all understood that Shintaku was general manager there.

Q. Didn't Mr. Yee attend to all the financing of the Company? Wasn't that his responsibility?

A. No, I financed it mostly.

Q. You financed mostly? A. Yes.

Q. Did you ever have any dealings with any finance company? A. No.

Q. Did Mr. Yee have any dealings with finance companies? A. Yes.

Q. Mr. Yee was not treasurer?

A. With my sanction he financed.

Q. With your sanction? A. Yes. [57]

Mr. Saunders: If your Honor please, I think it is obvious by now to the Court that this is getting

(Testimony of Takeshi Yokono.)

very far afield from the subject of (1) the execution of a document purporting to be by-laws, and (2) a discussion, or at least a reference to a meeting in which the by-laws were signed. Now, that was the limits of Mr. Yokono's direct examination, and Counsel is now going very far afield in trying to prove authority by this witness when his direct examination did not encompass authority.

The Court: Overruled.

Q. (By Mr. Cades): Mr. Yokono, referring to that meeting that was held in the office, did Mr. Yee preside at the meeting? A. Yes.

Q. He was the presiding officer? A. Yes.

Q. Did he preside at all meetings that were held of the directors of the company? A. Yes.

Q. At that meeting did they adopt any resolution authorizing any particular officer to make arrangements with finance companies?

A. What is the question?

Mr. Cades: Read the question.

(Question read.) [58]

Mr. Cades: This is the meeting in November I am referring to.

The Witness: Oh.

A. I don't remember.

Q. (By Mr. Cades): There are no minutes or records, you say, of what was carried on at that meeting? A. No, sir.

Q. Do you have any knowledge of any resolution, any written resolution, that was ever adopted by the

(Testimony of Takeshi Yokono.)

Company relating to dealings by the Company with finance companies?

Mr. Cades: I will withdraw that if you are confused.

Q. (By Mr. Cades): You know that this Company dealt with the Federal Services Finance Corporation, don't you? A. Yes.

Q. Did the Company ever adopt a resolution relating to that business? A. You mean written?

Q. Any kind of a resolution. Is there any record of any resolution?

A. I don't remember anything like that.

Q. You don't have any knowledge of any resolution? A. No written resolution.

Q. Did you ever see a letter that was written on behalf of Waipahu Auto Exchange to the Federal Services Finance [59] providing an arrangement under which conditional sale contracts could be sold to that company?

Mr. Saunders: If your Honor please, for the record may I make clear that our objection goes to this entire line of testimony as being not within the scope of the direct examination. If Counsel for the defense wants to go into all these matters, I think it is only fair he make this witness his witness and refrain from leading questions, which certainly are not in order on direct examination, which this actually is.

The Court: The record shows your objection.

Mr. Cades: Will you read the question.

(Testimony of Takeshi Yokono.)

(Question read.)

A. As far as I recall I haven't seen it.

Q. (By Mr. Cades): You haven't seen such a letter. Then you had no personal knowledge of the arrangements that existed with respect to the sale of conditional sale contracts to this finance company?

A. No.

Q. No. You have no knowledge of them?

A. Excepting from what we understood from Yee.

Q. And you depended on Yee for the making of arrangements and the carrying out of arrangements?

Mr. Saunders: May we have that clarified, your Honor. What arrangements? [60]

Mr. Cades: He understands the question, I think.
The Witness: No.

Mr. Cades: Would you read him the question again.

(Question read.)

Q. (Continuing): With the finance company?

A. Yes.

The Court: What was the answer?

(Answer read.)

Q. (By Mr. Cades): Mr. Yokono, did you ever see a letter written to the Waipahu Auto Exchange by the Federal Services Finance and approved by the Waipahu Auto Exchange relating to arrange-

(Testimony of Takeshi Yokono.)

ments for the financing of conditional sale contracts?

A. No.

Mr. Saunders: If your Honor please, we feel that the law applicable to this situation is——

The Court: Say that last over again.

Mr. Saunders: We feel that the law applicable to the situation is that the scope of cross-examination of this witness should have been limited to matters relating to the execution of the document purporting to be the by-laws, and with that understanding we suggested that that complete the cross-examination of this witness. We have under subpoena Mr. Herbert Lee, attorney-at-law, an officer of this court. We don't want to delay him unnecessarily and he is due in [61] another court at 10:30 this morning. With your Honor's permission we would like to ask the witness Yokono be excused and Mr. Herbert Lee put on at this time.

Mr. Cades: We offered to put him on out of turn and they refused it. We accept the offer again to put Mr. Lee on out of turn, by all means.

(Witness temporarily excused.)

HERBERT K. H. LEE

called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: Sit down.

Mr. Saunders: If your Honor please, with the consent of Counsel for the defense, we offer in

(Testimony of Herbert K. H. Lee.)

evidence a certified copy of the Articles of Incorporation and Affidavit of officers of Waipahu Auto Exchange, Limited, and ask that it be marked Plaintiff's Exhibit C.

Mr. Cades: Would you mind identifying it as to date for my record. I have no objection.

Mr. Saunders: There are two stamps. Treasurer's Office Rec'd 1948, Nov. 27, 10:31 a.m.; secondly, there is another stamp: Rec'd 1948 Dec. 7, 11:51 a.m.

The Clerk: Plaintiff's Exhibit C.

Mr. Saunders: didn't get your Honor's ruling. Was that received in evidence?

The Court: Yes. [62]

(Thereupon, the document above referred to was received in evidence as Plaintiff's Exhibit C.)

PLAINTIFF'S EXHIBIT C

Territory of Hawaii

Treasury Department

Honolulu

It is hereby certified that the attached is a true and exact copy of: Articles of Incorporation and Affidavit of Officers of Waipahu Auto Exchange, Limited, filed and recorded in this office on December 7, 1948.

In witness whereof, I have hereunto set my hand and affixed the seal of the Treasury Department,

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit C—(Continued)

Territory of Hawaii, this 14th day of March, 1950.

[Seal] /s/ WILLIAM B. BROWN,
 Treasurer, Territory of Ha-
 waii.

In the Matter of the Incorporation of
WAIPAHA AUTO EXCHANGE, LIMITED.

Articles of Incorporation
and Affidavit

(Treasurer's Office Rec'd 1948, Nov. 27, 10:31
a.m., Territory of Hawaii.)

(Treasurer's Office Rec'd 1948, Dec, 7, 11:51
a.m., Territory of Hawaii.)

HERBERT K. H. LEE,
304 Hawaiian Trust Bldg.,
Honolulu 48, Hawaii,
Attorney for Incorporators.

(Copy)

In the Matter of the Incorporation of
WAIPAHA AUTO EXCHANGE, LIMITED.

Articles of Incorporation

Know All Men by These Presents:

That the undersigned, being all natural persons of
full age, and residents of and in the City and County
of Honolulu, Territory of Hawaii, do hereby asso-
ciate themselves together for the purpose of forming
a corporation under the laws of the Territory of

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit C—(Continued)

Hawaii, and do hereby adopt the following Articles of Incorporation, the provisions whereof shall be binding upon the parties hereto and their associates, successors and assigns.

I.

The name of the corporation is and shall be Waipahu Auto Exchange, Limited.

II.

The principal office of said corporation is and shall be in Waipahu, City and County of Honolulu, Territory of Hawaii, but branch offices may be established by said corporation in any portion or portions of said Territory within or without said city and county and in any state, territory or possession of the United States of America and in any foreign country.

* * *

VII.

The following persons shall comprise the Board of Directors of the corporation, and they shall hold office (subject to the provisions of these Articles) henceforth until the annual meeting of the corporation to be held in 1949, and thereafter until their successors are elected or appointed: Anthony Yee, Fred H. Shintaku, Kay Y. K. Pang, Takeshi Yokono, Herbert K. H. Lee.

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit C—(Continued)

VIII.

The following persons shall hold offices set opposite their respective names (subject to the provisions of these Articles) henceforth until the annual meeting of the corporation to be held in 1949, and thereafter until their successors are elected or appointed:

Anthony Yee	President
Fred H. Shintaku.....	Vice-President
Kay Y. K. Pang.....	Secretary
Takeshi Yokono	Treasurer

IX.

These Articles of Incorporation may be amended at any time by vote of at least three-fourths ($\frac{3}{4}$) of all the issued and outstanding stock of the corporation at a meeting duly called for the purpose of considering such question and as provided by law.

In Witness Whereof, the parties hereto have hereunto subscribed their names at Honolulu, T.H., this 23rd day of November, A.D. 1948.

/s/ ANTHONY YEE,

/s/ FRED H. SHINTAKU,

/s/ KAY Y. K. PANG,

/s/ TAKESHI YOKONO,

/s/ HERBERT K. H. LEE.

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit C—(Continued)

Territory of Hawaii,

City and County of Honolulu—ss.

On this 23rd day of November, A.D. 1948, before me personally appeared Anthony Yee, Fred H. Shintaku, Kay Y. K. Pang and Takeshi Yokono, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[Seal] /s/ JANET S. YOSHIDA,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission Expires Jan. 22, 1951.

Territory of Hawaii,

City and County of Honolulu—ss.

On this 1st day of December, A.D. 1948, before me personally appeared Herbert K. H. Lee, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FLORENCE Y. OKUBO,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission Expires August 9, 1951.

Territory of Hawaii,

City and County of Honolulu—ss.

Anthony Yee, Kay Y. K. Pang and Takeshi Yo-

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit C—(Continued)

kono, being first duly sworn on oath, each for himself and not one for the other, depose and say:

I.

That affiants are officers of the corporation asking to be incorporated under the laws of the Territory of Hawaii under the name Waipahu Auto Exchange, Limited, to-wit, the said Anthony Yee is President, Kay Y. K. Pang is the Secretary and Takeshi Yokono is the Treasurer.

II.

That the capital stock of said company is Ten Thousand Dollars (\$10,000.00) divided into One Thousand (1,000) shares of the par value of Ten Dollars (\$10.00) each with the privilege of increasing said capital stock to the sum of One Hundred Thousand Dollars (\$100,000.00).

III.

That more than seventy-five per cent (75%) of said capital stock has been subscribed and paid for as follows:

	Subscribed	Paid in Cash
Anthony Yee.....	200 shares	\$ 500.00
Fred H. Shintaku.....	200 shares	500.00
Kay Y. K. Pang.....	200 shares	500.00
Takeshi Yokono.....	200 shares	500.00
	<hr/>	<hr/>
	800 shares	\$2,000.00

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit C—(Continued)

That the subscription price of said capital stock is Ten Dollars (\$10.00) a share.

That each of the above mentioned persons have paid in cash unto the Treasurer of the corporation at least ten per cent (10%) of the amount of their respective subscription.

That there has been paid unto the Treasurer of the corporation on said capital stock subscribed afore-said the sum of Two Thousand Dollars (\$2,000.00) in cash, being more than ten per cent (10%) of the said capital stock of said company.

/s/ ANTHONY YEE,

/s/ KAY Y. K. PANG,

/s/ TAKESHI YOKONO.

Subscribed and sworn to before me this 23rd day of November, 1948.

[Seal] /s/ JANET S. YOSHIDA,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission Expires January 22, 1951.

Admitted March 16, 1950.

Direct Examination

By Mr. Saunders:

Q. Mr. Lee, what is your occupation?

A. Attorney-at-law.

Q. Did you represent the Waipahu Auto Ex-

(Testimony of Herbert K. H. Lee.)

change, Limited, during its period of incorporation?

A. I drew up the Articles of Incorporation and the By-Laws, yes.

Q. Now, you then represented the incorporators of the corporation as well; is that correct?

A. That's correct.

Q. And you say you drew up the by-laws?

A. That's right.

Q. After you had completed the by-laws and articles, what did you do with them?

A. Well, if I recall, following the usual procedure, it was submitted to the treasurer—the articles were submitted to the treasurer for filing.

Q. Prior to that, Mr. Lee, did you give them to any particular persons to have executed?

A. Yes, I remember that it was Mr. Yee, Anthony Yee, who was the—well, the prime mover in this organization. He was the first one person who consulted me about the [63] organizing a corporation called the Waipahu Auto Exchange.

Q. So that when you completed the preparation of the by-laws and articles, what did you do with them?

A. I turned it over to Mr. Yee.

Q. And then were they returned to you signed?

A. Well, I believe so, yes.

Q. And then you filed the articles; is that correct?

A. That's correct.

Q. And did you file them on November 27, 1948?

A. I will have to look at the record. I wouldn't be able to recall. Well, the date that it was filed, as

(Testimony of Herbert K. H. Lee.)

certified by the treasurer, would be the approximate date as far as my own recollection is concerned.

The Court: Well, is your memory to the effect that you personally took them to the treasurer's office and filed them?

The Witness: No, I believe it was my secretary who filed them.

Q. (By Mr. Saunders): You gave them to your secretary to file them? A. That's right.

Q. On or about November 27?

A. That's right.

The Court: Yee returned them to you?

The Witness: I don't recall, your Honor. [64]

Q. (By Mr. Saunders): They were returned to you, though, through your agent?

A. Oh, yes. You mean for filing purposes? I thought your Honor meant after it was filed.

The Court: I meant for filing.

Q. (By Mr. Saunders): Anthony Yee returned the articles to you?

A. I believe so. It has been so long. It is the usual procedure that where people who come to me as clients, for me to draft the papers for incorporation, return the same to me for filing.

Q. You prepared the by-laws and the articles for only four signatures; is that correct?

A. Yes, I believe so.

Q. So that at the time you submitted the by-laws and the articles to Mr. Yee to have executed, there were only four spaces for signatures on each document? A. I believe so.

(Testimony of Herbert K. H. Lee.)

Q. And the articles of association, after having been filed with the treasurer's office, were returned to you; is that correct?

A. Yes, because I had overlooked the fact that under our statutory laws there would have to be five incorporators before filing.

Q. So what did you do to cure the oversight?

A. Well, they asked me to be a dummy director just for the purpose of compliance with the statute.

Q. And were you also asked to be a dummy incorporator? A. Yes.

Q. Now, during this procedure of incorporation prior to filing the articles of incorporation, did you approve the by-laws?

A. Did I personally approve the by-laws? I drew up the by-laws.

Q. So that you did approve them and in fact even drew them up?

A. When you say the word 'approved,' by implication, yes, I approved it, yes.

Q. I show you Plaintiff's No. 1, for identification, and ask if you have ever seen this document before.

PLAINTIFF'S EXHIBIT No. 1

Waipahu Auto Exchange, Limited

By-Laws

* * *

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit No. 1—(Continued)

Article III.

Board of Directors

* * *

Section 3. Chairman, Meetings, Notice. The Board may appoint a Chairman who shall preside at all meetings and serve during the pleasure of the Board. The Board shall hold meetings as often as the business of the corporation may require at the call of the President, the Chairman of the Board, or any two directors. The Secretary shall give notice of each meeting of the Board of Directors either orally or in writing by mailing or delivering the same not less than one (1) day before the meeting unless otherwise prescribed by the Board. The failure by the Secretary to give such notice or by any director to receive such notice shall not invalidate the proceedings of any meeting at which a quorum of directors is present. The directors elected at the annual stockholders' meeting of the corporation shall, without any notice being given, hold a meeting as soon as may be after the meeting of the stockholders at which they are elected.

Section 4. Quorum and Adjournment. The majority of the directors shall constitute a quorum for the transaction of business and no action taken, other than the appointment of directors to fill temporary vacancies, as provided in these by-laws, shall bind the corporation unless it shall receive the concurring

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit No. 1—(Continued)

vote of a majority of all the directors. In the absence of a quorum, the presiding officer or a majority of the directors present may adjourn the meeting from time to time without further notice until a quorum be had.

Section 5. Powers of Board of Directors. The property, affairs and business of the corporation shall be managed by the Board of Directors and, except as otherwise provided by law or these by-laws, all the powers and authority of the corporation shall be vested in and may be exercised by the Board of Directors as fully and for all purposes as though exercised directly by the stockholders; and in furtherance and not in limitation of said general powers, the Board of Directors shall have power: To acquire and dispose of property; to appoint a general manager and such other managers, officers or agents of the corporation as in its judgment this business may require, and to confer upon and to delegate to them by power of attorney or otherwise such power and authority as it shall determine; to fix the salaries or compensation or any or all of the officers, agents and employees of the corporation, and in its discretion require security of any of them for the faithful performance of any of their duties; to declare dividends in accordance with law when it shall deem it expedient; to make rules and regulations not inconsistent with law or the by-laws for the transaction of business; to instruct the officers or agents of the corporation with respect to, and to

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit No. 1—(Continued)

authorize the voting of, stock of other corporations owned or held by this corporation; to incur such indebtedness as may be deemed necessary, which indebtedness may exceed the amount of the corporation's capital stock; to create such committees (including an executive committee or committees) and to designate as members of such committees such persons as it shall determine, and to confer upon such committees such powers and authorities as may by resolution be set forth for the purpose of carrying on or exercising any of the powers of the corporation; to create and set aside reserve funds for any purpose and to invest any funds of the corporation in such securities or other property as to it may seem proper; to remove or suspend any officer and generally to do any and every lawful act necessary or proper to carry into effect the powers, purposes and objects of the corporation.

Section 6. Vacancies and Substitute Directors. If any permanent vacancy shall occur in the Board of Directors through death, resignation, removal or other cause, the remaining directors, by affirmative vote of a majority of the whole Board, may elect a successor director to hold office for the unexpired portion of the term of the director whose place shall be vacant.

In case of a temporary vacancy, due to the absence of any director from Waipahu or the sickness or disability of any director, the remaining directors, whether constituting a majority or a minority

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit No. 1—(Continued)

of the whole Board, may appoint some person as a substitute director who shall be a director during such absence or disability and until such director returns to duty. The determination by the Board of Directors as shown on the minutes of the fact of such absence or disability and the duration thereof shall be conclusive as to all persons and the corporation.

Section 7. Approval of Acts of Board of Directors. At any annual or special meeting of the stockholders any or all of the acts and doings of the Board of Directors may be ratified, confirmed and approved by the stockholders and such ratification and approval shall be as valid and as binding upon the corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the corporation.

No contract, agreement, undertaking or other transaction between this corporation and any other corporation shall be affected by the fact that some or all of the directors of this corporation are interested in or are directors or officers of such other corporation.

Article IV.

Officers

Section 1. Appointment. The officers of the corporation shall be the President, Vice-President, Secretary and Treasurer, and in addition thereto, in the discretion of the Board of Directors, a Chairman of

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit No. 1—(Continued)

the Board, an Assistant Treasurer or Assistant Treasurers, and an Assistant Secretary or Assistant Secretaries, and such other officers with such duties as the Board of Directors shall from time to time determine. All officers shall be appointed annually by the Board of Directors and shall serve until their successors shall have been appointed. One person may hold more than one office and all officers shall be subject to removal at any time by the affirmative vote of the majority of the whole Board. The Board of Directors may, in its discretion, appoint acting or temporary officers and may appoint officers to fill vacancies occurring for any reason whatsoever, and may in its discretion limit or enlarge the duties and powers of any officer appointed by it.

Section 2. Chairman of the Board. The Chairman of the Board, if appointed, shall preside at all meetings of the Board of Directors and shall perform such other duties as may be required of him by the Board of Directors.

Section 3. The President. The President shall preside at all meetings of stockholders; and in case no Chairman of the Board of Directors is appointed, or in the absence of such a Chairman, if appointed, he shall preside at meetings of the Board of Directors. He shall exercise general supervision over the business of the corporation and over its several officers, agents and employees, subject, however, to the control of the Board of Directors.

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit No. 1—(Continued)

Section 4. The Vice-President. The Vice-President or Vice-Presidents shall, in the order of priority of appointment, perform all the duties and exercise all the powers and rights of the President provided by these by-laws or otherwise during the absence or disability of the President, or whenever the office is vacant, and shall perform all other duties assigned by the Board of Directors.

Section 5. The Treasurer. The Treasurer shall have custody of all the funds, notes, bonds and other evidences of property of the corporation, and shall be responsible for keeping all the books and accounts of the corporation, and shall render statements thereof in such form and as often as required by the Board of Directors. He shall be responsible for the keeping of the stock books, stock transfer books, and stock ledger of the corporation. The Treasurer shall perform all other duties assigned to him by the President or the Board of Directors.

Section 6. The Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the stockholders. He shall give notice in conformity with these by-laws of all meetings of the stockholders and the Board of Directors. In the absence of the President and the Vice-President he shall call all meetings of the stockholders to order and shall preside until a chairman pro tempore is chosen. He shall also perform all other duties assigned him by the Board of Directors or the President.

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit No. 1—(Continued)

Article V.

Execution of Instruments

Section 1. Proper Officers. Except as otherwise provided by these by-laws or by law, all checks, drafts, notes, bonds, acceptances, deeds, leases, contracts, and all other documents and instruments, shall be signed, executed and delivered by the President or a Vice-President and by the Treasurer or the Secretary; provided, however, that the Board of Directors may from time to time by resolution authorize checks, drafts, bills of exchange, notes, orders for the payment of money, licenses, endorsements, stock powers, powers of attorney; proxies, waivers, consents, returns, reports, applications, notices, agreements or documents, instruments or writings of any nature to be signed, executed and delivered by such officers, agents or employees of the corporation, or any one of them, in such manner as may be determined by the Board of Directors.

Article VI.

Voting of Stock by the Corporation

Section 1. In all cases where the corporation owns, holds or represents, under power of attorney or proxy or in any representative capacity, shares of the capital stock of any corporation, or shares or interests in business trusts, co-partnerships, or other associations, such shares or interests shall be represented and voted by the President or, in the absence

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit No. 1—(Continued)

of the President, by a Vice-President; or in the absence of the Treasurer, by the Secretary; provided, however, that in the absence of any such officer then any person specifically appointed by the Board of Directors for the purpose shall have the right if present to represent and vote such shares or interests.

Article VII.

Capital Stock

Section 1. **Certificates of Stock.** The certificates of stock of each class shall be in such form and of such device as the Board of Directors shall from time to time determine. They shall be signed by the President or a Vice-President and by the Treasurer or the Secretary, and shall bear the corporate seal. Certificates shall not be issued for fractional shares. In the event that fractional interests shall result in any manner as a result of any action by the stockholders or directors of the corporation, the Treasurer may sell the aggregate of such fractional interests under such reasonable terms and conditions as the Treasurer shall determine, subject, however, to the control of the Board of Directors, and distribute the proceeds thereof to the persons entitled thereto.

Section 2. **Transfer of Stock.** Transfer of stock may be made in any manner permitted by law, but no transfer shall be valid except between the parties thereto until a new certificate shall have been ob-

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit No. 1—(Continued)

tained and the transfer shall have been duly recorded in the stock books of the corporation.

No certificate for stock shall be delivered unless the person entitled to such certificate, or some person duly authorized by him, shall receipt for the same and agree to be bound by all of the provisions of the by-laws applicable to such shares.

Section 3. Closing of Transfer Books. The Board of Directors shall have power for any corporate purpose to close from time to time the stock transfer books of the corporation for a period not exceeding twenty-five (25) consecutive days; provided, however, that in lieu of closing the stock transfer books as aforesaid, the Board of Directors may fix in advance a record date for the payment of any dividend, or for the allotment of rights, or for the effective date of any change, conversion or exchange of capital stock, or in connection with obtaining the consent of stockholders in any matter requiring their consent, or for the determination of the stockholders entitled to notice of and to vote at any meeting; and in such case only such stockholders as shall be stockholders of record on the record date so fixed shall be entitled to the rights, benefits and privileges incident to ownership of the shares of stock for which said record date has been fixed, notwithstanding any transfer of any stock on the books of the corporation after any such record date.

Section 4. Lost Certificates. The Board of Direc-

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit No. 1—(Continued)

tors may, subject to such rules and regulations as may be adopted by it from time to time, in its discretion, order a new certificate or certificates of stock to be issued in the place of any certificate or certificates of the corporation alleged to have been lost or destroyed, but in every such case the owner of the lost certificate or certificates shall be required to file sworn evidence showing the facts connected with such loss, and shall be required to give to the corporation a bond or undertaking in such sum not less than twice the par value, if any, or not less than twice the amount of the market value, of such lost or destroyed certificate or certificates of stock as the Board of Directors may direct as indemnity against loss, damage or liability that the corporation may incur by reason of such issuance of a new certificate or certificates.

The Board of Directors may, in its sole discretion, refuse to replace any lost certificate save upon the order of the court having jurisdiction in the manner.

Article VIII.

Voting Trust Agreements

In the event that the trustee or trustees of any voting trust agreement affecting the stock of the corporation shall file with the Secretary of the corporation an executed counterpart of any such voting trust agreement, the corporation and all directors and officers thereof shall be required to recognize and give effect to the powers of the trustee or trustees thereunder.

(Testimony of Herbert K. H. Lee.)

Plaintiff's Exhibit No. 1—(Continued)

Article IX.

Amendment

These by-laws may be altered, amended or repealed from time to time by a vote of not less than the majority of all the stock of the corporation issued and outstanding and entitled to vote at any annual meeting or at any special meeting called for such purpose.

The undersigned, Anthony Yee, Fred H. Shintaku, Kay Y. K. Pang and Takeshi Yokono, being the incorporators of Waipahu Auto Exchange, Limited, at the incorporation of the same at Honolulu, Territory of Hawaii, have adopted the foregoing as the by-laws of the corporation this 23rd day of November, A.D. 1948.

/s/ ANTHONY YEE,

/s/ FRED H. SHINTAKU,

/s/ KAY Y. K. PANG,

/s/ TAKESHI YOKONO.

Marked for identification March 15, 1950.

A. Oh yes, this was in my file before you asked me for it.

Q. During the life of the corporation you maintained this document in your file?

A. I believe so, because it was in my file all the time and was never released to anyone. This was the original.

(Testimony of Herbert K. H. Lee.)

Q. That was the original? A. Yes.

Q. Of the purported by-laws? A. Yes. [66]

Q. Do you recognize the signatures thereon?

A. Well, I recognize Anthony Yee's signature. I recognize Fred Shintaku's signature, and Yokono. I don't recognize Kay Y. K. Pang.

Q. From the time that the articles of association and the document there were returned to you, at all times that particular document, Plaintiff's Exhibit 1, was in your possession; is that correct?

A. That's correct.

Q. And you knew of the existence and the contents thereof? A. Oh, yes.

Q. Did you believe that those were the by-laws of the corporation?

A. There is no doubt——

Mr. Cades: I object to that——

A. (Continuing——about it in my mind.

Mr. Cades (Continuing): As to whether he believed they were or not. It is a matter your Honor is to rule on.

Mr. Saunders: If your Honor please, I ask that for the purpose of showing that at all times Mr. Lee, one of the incorporators, approved of and believed and acted as though these were the by-laws. Now, whether or not they were the by-laws is for your Honor to determine, but whether or not this incorporator adopted and approved and believed [67] these by-laws is another matter.

Mr. Cades: That still becomes a matter of law,

(Testimony of Herbert K. H. Lee.)

your Honor. Under our statute the only occasion on which he could be asked for belief would be an expert, and my understanding of the law is that your Honor will be the expert on what the law is.

The Court: Well, the situation is that he answered the question. Do you want it stricken?

Mr. Cades: I didn't hear the answer. May I hear the answer, Miss Reporter.

(Answer read.)

Mr. Cades: I move that the answer be stricken from the record.

Mr. Saunders: If your Honor please, the purpose of my asking the question is to show—and I will cite law to that effect—that where there has been substantial compliance with the statute that is all there is required. We have already shown that four of the incorporators approved and adopted the by-laws during the procedure prior to incorporation and that Mr. Lee, if you will pardon the term, a dummy incorporator, made up the by-laws, acted throughout the life of the corporation as if they were the by-laws, and himself believed they were the by-laws. We submit that is part of our showing that there has been a substantial compliance with the statute. [68]

Let me quote the section of the statute we are relying on, Section 8335, Revised Laws of Hawaii, 1945: “. . . provided, however, that by-laws may be adopted at the incorporation of a corporation by the signers of the articles of association.”

There were five signers, as is indicated in that

(Testimony of Herbert K. H. Lee.)

document, Anthony Yee, Fred Shintaku, Takeshi Yokono, and Kay Pang, and the dummy incorporator, Mr. Herbert Lee, who signed only for the purpose of satisfying the statute of Hawaii, which requires five signatures.

The Court: Yes, well, you are talking about the articles of association now?

Mr. Saunder: Beg pardon?

The Court: You are now talking about the articles of association?

Mr. Saunders: The articles of association show there were five incorporators.

The Court: Yes.

Mr. Saunders: The statute relating to by-laws provides that the by-laws may be adopted at the incorporation of a corporation by the signers of the articles of association. I made reference to Plaintiff's Exhibit C to show who the signers of the articles of association were. I point out that in the adoption of the by-laws that Mr. Herbert Lee is the only one who didn't sign, but that he actually approved of them and acted throughout the life of the corporation as if they [69] were the by-laws. We submit that that of itself will make a showing that there was substantial compliance with the statute and that in truth these were the by-laws.

The Court: Are you through?

Mr. Saunders: Beg pardon?

The Court: Are you through?

Mr. Saunders: Yes, your Honor.

Mr. Cades: If your Honor please, I think Mr.

(Testimony of Herbert K. H. Lee.)

Saunders doesn't have in mind what is before your Honor for ruling. I have objected to a question asked of this witness as to whether he believed they were the by-laws. If your Honor please, the question of whether he believed or not is not one of the operative facts that are going to determine whether there were any by-laws adopted or not, and my reason for saying that is that a corporation is required, where there are statutes saying what shall be done, either the corporation complies with the statute or they haven't any by-laws. The statute clearly provides it has to be at a meeting that is called for the purpose. That was not done. Or it has to be at incorporation. At incorporation would be either the date of the first filing, which was rejected by the treasurer, or the second filing, which was permitted by the treasurer. There is no evidence, and we will argue whether they are by-laws or not at a later time. I think the only thing before your Honor is really a matter of form of evidence, if [70] an attorney-at-law can be permitted to say whether he thought they were by-laws or not, and I submit that is not a proper question. That is a matter your Honor determines, not an attorney. That is the only matter before your Honor at this time.

The Court: And your motion was to strike.

Mr. Cades: My motion was to strike.

The Court: The motion is granted.

Q. (By Mr. Saunders): Mr. Lee, did you act upon this document as if it was the by-laws of the

(Testimony of Herbert K. H. Lee.)

corporation of Waipahu Auto Exchange, Limited?

A. I don't know how to answer that question, Mr. Saunders. Did I act. I stated that I drew up the by-laws, I drew up the articles, and that these by-laws were signed and executed at the time that I prepared the articles and by-laws and were returned for filing, and I, for the purpose of the statute, signed the articles of association and apparently took care of that situation first and kept the by-laws as though it were the functional by-laws of the Waipahu Auto Exchange, Limited.

Q. Were you a shareholder in this corporation?

A. No.

Mr. Saunders: If your Honor please, I make a second offer of proof of Plaintiff's Exhibit 1, for identification and ask that these be received in evidence, based upon a [71] foundation's having been laid in the testimony of Mr. Lee and Mr. Yokono.

Mr. Cades: Before ruling on that, may I cross-examine as to this document, your Honor.

Voir Dire Examination

By Mr. Cades:

Q. Mr. Lee, you didn't actually sign any set of by-laws, did you, for the corporation?

A. No, I didn't.

Q. And from what you have discovered since this matter has arisen, you believe that these by-laws were at all times in your own files; is that correct?

A. That is correct.

Q. Then you do know that the secretary of the

(Testimony of Herbert K. H. Lee.)

corporation—By the way, what is the secretary's name?

A. Well, I wouldn't be able to recall without looking at the articles.

Q. The secretary is shown as Kay Y. K. Pang. Do you happen to know who she is?

A. I don't.

Q. You have no knowledge as to whether she had a copy certified by her which was available for the examination of the stockholders?

A. What document do you refer to? The articles?

Q. The by-laws. [72]

A. The by-laws.

Q. By-laws.

A. Will you repeat that question again; I didn't understand it.

(Question read.)

A. No, I haven't had no contact with her in person. I couldn't answer that she had certified these to the stockholders.

Q. But you are not in a position to say that she had a copy? Actually, as far as you know, this is the only existent copy that was in your files; is that right?

A. I don't know whether I have another copy, Mr. Cades, but that was the copy in my file.

Q. I mean, you don't know that there were any other copies except the ones that were in your files; is that right?

A. No, I prepared several copies of the by-laws.

(Testimony of Herbert K. H. Lee.)

I don't know how many. It is usually four, four or five copies.

Q. But you don't know anything about the existence or whereabouts of other copies?

A. No, I don't.

Q. And you don't know whether any other copies were signed? A. No, I don't.

Q. I show you a receipt of December 1, 1948, from your [73] office. Will you state whether you have any personal knowledge as to the payment that was represented by that receipt.

A. Well, it speaks for itself here that my office received from Anthony Yee \$150, incorporation of Waipahu Auto Exchange, legal fee, and signed by my secretary.

Q. Do you know whether Anthony Yee brought currency to your office?

A. I couldn't say of my own knowledge because that dealing would be directly with my secretary. That is the office functional procedure on all payments of bills. But I notice it says "cash" there.

Q. Probably a cash payment. A. Yes.

Q. By Yee. A. Yes.

Mr. Cades: I offer this in evidence.

Mr. Saunders: If your Honor please, I see no foundation whatsoever for the introduction of this document in evidence. It has no bearing on the case whatsoever. I object that it is immaterial and irrelevant, and I further object it is being offered on cross-examination, which is an improper manner in which to offer an exhibit.

(Testimony of Herbert K. H. Lee.)

The Court: What is the purpose?

Mr. Cades: If your Honor please, you will recall that on direct examination there was a statement made that [74] Anthony Yee was the prime mover in this. I want your Honor to get the background and that Yee was the corporation in many, many respects. It will have some bearing, as your Honor will see, on whether these are corporate by-laws or whether they are not. I will admit, your Honor, that it doesn't throw any great light on the matter. I am trying to bring before the Court the proper background of it because ultimately you are going to have to rule on the admissibility of the by-laws.

The Court: The objection is sustained. Materiality.

Mr. Cades: May I have this document marked for identification.

The Court: Yes.

The Clerk: Defendant's A, for identification.

(Thereupon, the document above referred to was marked Defendant's A, for identification.)

Q. (By Mr. Cades): Mr. Lee, while you are on the stand, will you also identify this receipt 1979, issued to Anthony Yee for \$48.75—

Mr. Saunders: I object to this question—

Mr. Cades: Just a minute. I am just laying a foundation for identification.

Q. (Continuing): The receipt is dated January 21, 1949. That was issued by your office?

A. That's right. [75]

Testimony of Herbert K. H. Lee.)

Mr. Saunders: I object to the questions, your Honor, as being immaterial.

Mr. Cades: I haven't offered anything yet. I am asking this be marked for identification.

The Court: It may be marked for identification.

The Clerk: Defendant's B, for identification.

(Thereupon, the document above referred to was marked Defendant's B, for identification.)

Q. (By Mr. Cades): Mr. Lee, you are named in the articles of association as a director of the corporation. I think you identified yourself as a dummy director. Did you, in fact, attend any meetings of the board of directors? A. No.

Q. At no time during the life of the corporation? A. No.

Q. Were you ever notified of any meetings of the board of directors? A. No.

Q. Did you ever attend any stockholders' meetings of this corporation? A. No.

Q. You are not in a position to say whether there were any other or different by-laws that were ever adopted by the corporation?

A. Well, I know of no other by-laws. [76]

Q. You attended no meetings of directors or stockholders? A. No.

Q. Never received notice? A. No.

Q. So that if there were other by-laws of the corporation, you have no knowledge of them?

A. I have no knowledge.

Mr. Cades: I have no further questions. I object to the admissibility of these as the proposed by-

(Testimony of Herbert K. H. Lee.)

laws of the corporation on the grounds that there has been no compliance shown with the statutes of the Territory, without admitting that even if they were by-laws that it would have any bearing on the authority which will ultimately be decided. I think that the admissibility of these records would merely further clutter up the confusion as to who had authority to act.

Mr. Saunders: If your Honor please, prior to your Honor's ruling could I ask a couple of short questions.

The Court: Go ahead.

Direct Examination
(Continued)

By Mr. Saunders:

Q. Mr. Lee, where are your offices?

A. 304 Hawaiian Trust Building.

Q. And do you know where the offices are located of the Waipahu Auto Exchange, Limited; that is, where they were located at the time of the period just prior to incorporation? [77]

A. I believe they were located at Waipahu.

Q. How far from your office is Waipahu, approximately?

Mr. Cades: I think the Court knows.

A. Well, I really should know, but as to how many miles Waipahu is from my office——

Q. (By Mr. Saunders): Somewhere close to 20 miles, is it not? A. Approximately, yes.

Q. And the reason you handled them this way

(Testimony of Herbert K. H. Lee.)

was to avoid the four people's having to come to your office; is that correct? That is to say, the reason you prepared them and had them sent out to Waipahu?

A. Yes, I prepared them and Mr. Yee came for the papers and took the papers away from my office.

Q. Did you believe all of this to be a part of the procedure of incorporation, having the purported by-laws and having the articles signed in that manner? A. That is right.

Mr. Cades: I object to the form.

Mr. Saunders: I withdraw that. We have no further questions of this witness.

Mr. Cades: We submit the question, your Honor.

Mr. Saunders: Your Honor, may this witness be excused. I believe he is due in court.

The Court: Yes. [78]

(Witness excused.)

Mr. Saunders: If I may make a brief statement on the question of admissibility of this document, your Honor.

The Court: Just a minute. Now go ahead.

Mr. Saunders: If your Honor please, under our statute, Section 8335 provides that which Mr. Cades has cited, the by-laws may be adopted by meeting called for that purpose "provided, however, that by-laws may be adopted at the incorporation of a corporation by the signers of the articles of association. . ."

Now in this case we have a different set-up. We

have a period prior to incorporation, which was necessitated by the distance between the attorney's office and the place where the office of the corporation was located. We have a meeting where the by-laws were read. They were signed by four of the incorporators, and we have the fifth incorporator having prepared the by-laws, being only a dummy incorporator, not being a stockholder, signing only for the purpose of complying with the statute.

He further stated he approved the by-laws, that he acted as if they were the by-laws. We submit that that is certainly an adoption of the by-laws. There is nothing in the statute which requires that the by-laws have to be signed. It only says they have to be adopted. We submit that they were adopted by all the parties to the incorporation in compliance with the statute; and that, even if they were not, they have been acted upon at all times as if they were the by-laws of Waipahu Auto Exchange. That should cure any possible defect that might exist in the original adoption.

Mr. Cades: In order that our objection may be complete on the record, we object to the admissibility of these by-laws, first, because it affirmatively appears that they were not adopted by the corporation in accordance with the provisions of law and in fact are not by-laws; secondly, and equally important, because there has been no showing made—The statute providing that there is no constructive notice of the by-laws on outsiders, there is no showing made that we had or could have obtained actual notice of the by-laws; next, on the ground that it

appears from the evidence that has been adduced so far that even the statutory requirement of having a certified copy available, certified by the secretary and available for examination by the stockholders, which appears in this same section, was not complied with; next, on the ground that the only testimony that they acted as though these were the by-laws is a statement by the attorney that he assumed they were the by-laws because he had them in the file all during the existence of the corporation.

Since the movant has the affirmative burden of showing that this document either is the by-laws effective or that we had notice that they were by-laws and that there were [80] limitations brought home to us, the document is not admissible. For all those grounds we urge your Honor not to admit the document in evidence.

Mr. Saunders: If your Honor please——

The Court: Yes.

Mr. Saunders: If I could just clear up the purpose of our putting it in. We are not trying to show and we don't intend to indicate in any way the bank was on constructive notice that there were by-laws. We are putting the by-laws in evidence for the main purpose of showing that there was no express or implied authority in Anthony Yee to endorse checks in his capacity as president. The by-laws provide to the contrary. This is a matter of the internal workings of Waipahu Auto Exchange. The authority was given to the principal. The principal was Waipahu Auto Exchange. We are putting these in to show that they expressly provided in the by-laws the

manner in which checks could be signed, executed, and delivered. It has nothing to do with the notice of the bank.

The Court: In the absence of any meetings of either stockholders or directors with relation to these purported by-laws the offer is denied at the present time.

Mr. Saunders: If your Honor please, if I may call your attention to the testimony of Mr. Yokono yesterday, he said they had a meeting and all four of them read the articles [81] and by-laws at that time and signed them. He further stated that these were the by-laws under which the corporation acted. With that in mind, I ask your Honor to reconsider your ruling.

The Court: No, the ruling stands. Have these been marked for identification?

The Clerk: Yes, your Honor.

TAKESHI YOKONO

resumed the stand and testified further as follows:

Cross-Examination (Continued)

By Mr. Cades:

Q. Yokono, in your capacity as treasurer of the Waipahu Auto Exchange, did you have occasion to know anything about a payment of \$150 to Herbert Lee for the drawing of incorporation papers?

A. Yes.

Q. Did you make the payment?

A. Yes.

(Testimony of Takeshi Yokono.)

Mr. Saunders: If your Honor please, I move to strike that as being irrelevant and immaterial. It seems to me we are getting very far afield from the issues presented in this case.

The Court: Well, is this witness under cross-examination?

Mr. Cades: He is on general cross-examination again. He testified on direct that he was treasurer, and I am trying to probe his duties as treasurer.

Mr. Saunders: If your Honor please, he did not testify on direct that he was treasurer.

Mr. Cades: Since Mr. Saunders makes such a point of it, I have checked with my colleagues as to their notes, and if we have to check with the direct examination, we will have to do it.

Mr. Kidwell: The first question asked him indicates he was connected with Waipahu Auto Exchange. My notes don't indicate he was connected as treasurer.

Mr. Cades: If your Honor deems it pertinent, I think right at the beginning of the examination——

Mr. Saunders: If your Honor please, I happened to write down my questions and I know what questions I asked.

The Court: Some place it developed.

Mr. Saunders: If your Honor please, not on our direct. This is beyond the scope of the direct. If defense wants to make him his witness, we have no objection, but we want to have the right to cross-examine this witness. He is not our witness for any

(Testimony of Takeshi Yokono.)

purpose other than to show the execution of the document purporting to be the by-laws.

Mr. Cades: Your Honor, my memory may be at fault, but I have certainly understood if you put a man up, if he is put up for the purpose of showing his connection, I have a right to probe what his connection is. Our affirmative defenses [83] of negligence and that sort of thing, if they ever become pertinent, will be proved by our own witnesses. He is put on for the purpose of proving corporate authority. If on cross-examination I can't go into corporate authority, I would say, your Honor, that the rule about cross-examination was being unduly refined. It will take an awfully long time to try this case. I understand the need for orderly procedure. While he is here I want to probe into the questions of what as treasurer, or what he in his connection with the Company did do. That is the purpose of the examination.

Mr. Saunders: If your Honor please, Counsel for the defense is making another erroneous statement when he says the purpose of my putting him on was to prove authority. My purpose was limited to the express execution of the document purporting to be the by-laws. We intend to let that document speak for itself. We have no intention to bind ourselves by this witness on any problem of corporate authority. That is part of the affirmative defense that the defense has to show that payment was made to the payee. They must show that the

(Testimony of Takeshi Yokono.)

one actually paid was authorized by that corporation to collect that check.

All of this, furthermore, had to do with the meeting prior to the filing of the articles of incorporation and at that time Mr. Yokono was not treasurer, as a matter of fact, because there was no corporation in existence. [84]

The Court: Overruled.

Q. (By Mr. Cades): Mr. Yokono, did you have an office at Waipahu? Did you occupy an office belonging to the Waipahu Auto Exchange?

A. What kind of office?

Q. Well, did you draw a salary from the Waipahu Auto Exchange? A. Not yet.

Q. Never drew any salary? A. No.

Q. Well, how many hours a day did you put into your work for the Waipahu Auto Exchange?

A. Well, there wasn't any limited time. I just went as I pleased.

Q. You just went when you pleased. As a matter of fact, you had a full-time job running a store, didn't you? A. Yes.

Q. What is the name of the store?

A. Yokono Store.

Q. Yokono Store. What is that, a general store in Waipahu? A. Yes.

Q. And you were treasurer of this Auto Ex-

(Testimony of Takeshi Yokono.)

change on the side; isn't that right?

A. Yes. [85]

Q. You put in a limited amount of time every day or from day to day?

A. You mean to Waipahu Auto Exchange?

Q. Yes? A. Yes.

Q. When it was needed? A. Yes.

Q. And Anthony Yee is the only full-time employee that you had; isn't he? A. No.

Q. Who was the other full-time employee?

A. Shintaku.

Q. Full time? A. Yes.

Q. When did he become a full-time employee?

A. That I don't know. I have to look up the books.

Q. You would have to look up the books. Shintaku was never treasurer of the Company, was he?

A. No.

Q. You never delegated to Shintaku any of your duties as treasurer? A. No.

Q. Did you have access to the files and records of the corporation? A. Yes. [86]

Q. At Waipahu. Did you ever see in the files and records of the corporation a set of by-laws that were certified there? A. Yes.

Q. You did see? A. There was a copy.

Q. Where? There was a copy; where was it?

A. In the office.

Q. A signed copy? A. I don't know.

Q. You don't. When you say a "signed copy," do you mean the by-laws, which is Exhibit 1, for

(Testimony of Takeshi Yokono.)

identification, or do you mean the articles of association which is Plaintiff's Exhibit C? Which one do you have in mind?

A. I believe both of them were there. Copies.

Q. Copies of both were in the office?

A. Yes.

Q. Kept by whom?

A. Kept—What is the question?

Q. Who kept the records down there in the office? A. I did mostly.

Q. You did yourself? A. Yes.

Q. They were kept in your office then?

A. No, Waipahu Auto Exchange office. [87]

Q. You were only there from time to time. Who was in charge of the office there? Who was in charge of the Waipahu Auto Exchange office?

A. Shintaku.

Q. When he became a full-time employee; is that right? A. Yes.

Q. The secretary of the corporation was Mrs. Pang? A. Yes.

Q. Who is Mrs. Pang?

A. Mrs. Pang is Mrs. Pang.

Q. Is she a resident of Waipahu? A. Yes.

Q. Is she related to any of the boys in this Company? A. To Anthony Yee.

Q. She is related to Anthony Yee?

A. Yes.

Q. She was not very active as secretary, was she? A. No.

(Testimony of Takeshi Yokono.)

Q. Did she ever sign any papers as secretary, contracts, checks, or anything else relating to the corporation? A. No.

Q. She was just an inactive secretary, dummy secretary, wasn't she?

A. Well, she asked us to do all the work for her. She was not able to do it. [88]

Q. She was not able to? Why?

A. Well, she asked us. I don't know why.

Q. So she was a dummy secretary?

Mr. Saunders: If your Honor please, I object to the question.

Mr. Cades: All right, I will withdraw the question.

Q. (By Mr. Cades): Did she ever keep any records of any meetings or of any corporate transactions? A. No.

Q. In fact, she as secretary didn't know what the corporation was doing, at all, did she?

Mr. Saunders: If your Honor please, I object to that as leading. A. I do not think so.

Mr. Cades: This is on cross-examination.

Q. (By Mr. Cades): You don't think so?

Mr. Saunders: If your Honor please, could we have the objection ruled on and the answer stricken prior to the ruling?

The Court: Overruled.

Mr. Saunders: If your Honor please, Counsel for the defense has made a statement; he said this is cross-examination, leading questions are proper. That exactly is the whole point. It goes to our

(Testimony of Takeshi Yokono.)

objection throughout this entire line of testimony. Counsel for the defense is using [89] this witness as if he had been called on direct testimony by us for all these things and is therefore asking leading and suggestive questions to a witness who is easily impressed. It is obvious from his demeanor on the stand he does not get the import of every question. His answers are "yes" and "no" without full import of the question. It is highly prejudicial to our case because it is allowing the defense to ask leading questions on a matter which is properly their defense on a witness which is properly their own witness and not allowing us the privilege of cross-examination.

The Court: I don't know that the witness is easily impressed and I don't know that he is without clear information on all these matters. I don't consider the objection well grounded.

Mr. Saunders: Am I to understand, then, that there is an open field day on anything the defendant wants to go into on this witness?

The Court: Well, I am not wishing to give you that understanding.

Mr. Saunders: The only thing that I want to make clear is for the record to show we object to all of the questions that defendant is now asking. We would like to have a continuing objection on the grounds that our direct examination was limited solely to the scope that this witness was called to identify. [90]

(Testimony of Takeshi Yokono.)

The Court: I know you have made that objection two or three times. I don't consider it valid on that basis. Counsel for the defense may ask questions at any time that you would have a perfect right to object to and have a ruling on, but on a general objection I, up until now, can't see anything that justifies a sustaining of the objections. It has been ruled on adversely.

Mr. Saunders: My only point in asking that is that otherwise I am going to have to be a literal "jack-in-the-box" on every question he asks.

The Court: I don't know that you do, but you have discretion in the matter. I have already ruled on your main proposition, that the witness having been called for a limited special purpose, on cross-examination Counsel can't go outside of that scope. I have already ruled on that and said that he could under the circumstances in the case.

Mr. Saunders: Your Honor said that he could go without the scope?

The Court: Yes, under the circumstances of the case that he can inquire as to all matters that he has inquired into.

Q. (By Mr. Cades): Mr. Yokono, I show you what purports to be——

Mr. Cades: I will strike that.

Q. (By Mr. Cades): Did you, in your capacity as [91] treasurer, attend to the making of deposits for this corporation? A. What is that?

Q. Answer so the judge and counsel can hear. You say that is right? A. I don't understand.

(Testimony of Takeshi Yokono.)

Mr. Saunders: Could the witness please be admonished to speak louder. The acoustics are very poor.

Mr. Cades: The acoustics are very bad. Speak out so he can hear you.

The Court: Repeat the question.

(Question read.)

The Court: You mean bank deposits?

Mr. Cades: Bank deposits for Waipahu Auto Exchange.

The Witness: You mean I did that?

Q. (By Mr. Cades): Did you? A. Yes.

Q. That was a part of your regular duties to attend to making deposits in the bank for Waipahu Auto Exchange?

A. I guess that was my duty.

Q. That was your duty. And you were supposed to know about all the cash receipts and the cash disbursements of the Company; isn't that right?

A. I believe so.

Q. All right, do you know—I show you here what purports [92] to be a duplicate deposit slip into the Bank of Hawaii for Waipahu Auto Exchange, January 21, 1949, and I ask you whether you have ever seen either that slip, or a duplicate of that slip before? A. Yes.

Q. Did you make up the original of that?

A. I believe so.

Q. You believe you did.

Mr. Cades: If your Honor please, I offer this

(Testimony of Takeshi Yokono.)

in evidence, and I offer to connect it up. The particular exhibit shows a currency deposit of \$2,721 on January 21, 1949. It is my purpose to connect that deposit up with some of the checks that are the subject of dispute in this case.

The Court: Well, you had better just have it marked for identification.

Mr. Cades: I think that is perhaps right. Before I do that——

Q. (By Mr. Cades): Do you know, Mr. Yokono, where the \$2,721 that was deposited on that date came from?

Mr. Saunders: If your Honor please, I object to that. This is a part of the defendant's affirmative case. If they want to make this witness their own, that is for them, but at present it is beyond the scope of cross-examination and we should have the right—Furthermore, it is beyond the authority of this witness. [93]

Mr. Cades: I am trying carefully, your Honor, to preserve what I understand to be the scope of your Honor's ruling. I am not trying to put on the affirmative defenses of negligence and the other four or five defenses in the direct case. As you can see, the witness is not a very willing witness. I am trying to probe to show your Honor that these by-laws, which have been offered, and all this talk of who had authority is without the slightest—with only the flimsiest kind of foundation. The secretary, who is the only other person who would know about

(Testimony of Takeshi Yokono.)

it, by his own testimony didn't know anything about it. He was a part-time employee. Obviously, it is pertinent, when you are discussing authority, for your Honor to know who Anthony Yee was in this picture. I mean, this is all going to the very purpose for which he was put on the witness stand, to wit, having to do with authority, and for which Mr. Lee was put on. Your Honor will remember there has been testimony, out of turn of course, but that these by-laws were acted on as though they were the by-laws of the Company. Now I certainly can show anything that would prove that that is not true, and this is right along the line.

The Court: Go ahead. Overruled.

The Witness: I have forgotten the question.

Mr. Cades: Will you read the question?

(Question read.) [94]

A. I believe that was some of the money from the shares stocks.

Q. But you don't know?

A. I guess that was the money.

Q. You guess that. Were there any books of account in existence at the time from which you can tell the Court where that money came from?

A. I am sure this money came from the stocks.

Q. Will you answer the question, please. Did the corporation have books of account at this time? I am talking about January 21, 1949. Can you answer that question? Do you understand the question, Mr. Yokono? A. No.

(Testimony of Takeshi Yokono.)

Mr. Cades: Read the question.

(Question read.)

A. Well, I do not—I do not know off hand.

Q. You do not know off hand. You were the treasurer of the Company; were you a bookkeeper?

(No response.)

Q. Well, you know whether you were a bookkeeper or not. Can't you answer?

A. You mean actual writing the books?

Q. Yes. Did you keep books?

A. No, I kept all the datas.

Q. You kept what? [95] A. The datas.

Q. Data, but no books? A. No.

Q. As a matter of fact, the books were written up in this Company somewhere around June or July, weren't they, of 1949? A. I guess so.

Q. Don't you know so?

A. Well, I don't know off hand the dates.

Q. I have some heavy books here, a journal and ledger that are marked Waipahu Auto Exchange. You have seen these books before, haven't you?

A. Yes.

Q. These books were bought about June, were they not, June or July of 1949?

A. I believe so.

Q. And they were written up sometime after that, after the Yee defalcation was discovered; isn't that right?

A. I don't know exactly what time. It must be about that, though.

(Testimony of Takeshi Yokono.)

Q. But it was after Yee had severed his active connection with the Company, stopped being the active president?

A. I guess so. It was about then.

Q. All right. Tell the Court, Have you any data, as you call it, or books, or records, as treasurer, from which [96] you can tell the Court where that currency came from that was deposited in the Bank of Hawaii on January 21?

A. I remember having a simple form of book-keeping books easy. I forgot what the name of that. It was an easy way. Easy bookkeeping form, or something like that.

Q. I am told that there are in the court room all of the books and records of the Company, which have come from the custody of the trustee on dissolution, in that box.

Would you mind looking through the books and records, or is there any material from which you could be able to tell the Court what the source of that currency is? Would you mind looking and seeing? Step down.

Mr. Saunders: If your Honor please, again this all is part of the defendant's case. They have had a chance to go through all the records. It is obvious this witness is confused. If they make him their witness, it is proper for them to go into these things and prove their payment. I am sure if they ask a few leading questions, they can deduce from whence these payments came. It is obvious they didn't

(Testimony of Takeshi Yokono.)

come from these checks. The first check is made on January 21. This deposit was made January 21. All of these records have been in the possession of the defendant since last Friday. This witness has been available to them. There is nothing sacred about this witness. As far as we are concerned he is properly his witness. We only used him for the limited [97] purpose of the by-laws.

Mr. Cades: I was just getting an excerpt. You said it is obvious it didn't come from these checks because the first check was cashed on January 21 and the first deposit was January 21.

The Court: January 1 or 21?

Mr. Cades: Twenty-first, the same day, your Honor, that the first check was cashed was the deposit. Here you have a contention of the plaintiff that they operated under by-laws. Here is the treasurer, and I am trying to probe to see whether that is correct. I admit it is difficult, because he is reluctant and unwilling, but I am doing the best I can to find out whether that is true. So far it appears they haven't operated under by-laws. The by-laws provide they should keep records and vouchers, and I want to know where they are.

Can you find anything, Mr. Yokono?

Mr. Saunders: If your Honor please, may I make this suggestion. Let's make it off the record.

(Statement off the record.)

Mr. Cades: Mr. Saunders misunderstands the tremely technical case that the plaintiffs are bring-

(Testimony of Takeshi Yokono.)

whole scope of the examination. This is an ex-
ing. They are going to try to make the bank respon-
sible because there weren't resolutions passed and
one thing and another. We want the Court to
see [98] how this corporation operated. I want a
visual inspection by the Court of this treasurer of
the corporation examining his data and records to
determine what happened to all of this cash, because
they are attempting by this case to place a burden
on the bank which if any bank assumed it would
have to go out of the banking business forthwith.
I mean, that is obviously the purpose of the exami-
nation.

The Court: Yes, if you think the witness is con-
fused at the present time, let's take a recess until
this afternoon and then go ahead, and he should
be over any confusion that he might have. He is a
man who has been in the trading business for many
years. I think he can take care of himself. What-
ever confusion he might have would be just tem-
porary. He can no doubt answer simple questions,
at least, without confusion. What time do you want
to adjourn to? Half past 1 or 2 o'clock?

Mr. Cades: Half past one would be very agree-
able.

The Court: Is that satisfactory?

Mr. Saunders: Satisfactory to us, your Honor.

(Thereupon, at 11:25 a recess was taken until
1:30 p.m. of the same day.) [99]

(Testimony of Takeshi Yokono.)

Afternoon Session, 1:37

TAKESHI YOKONO

resumed the stand and testified further as follows:

Mr. Buck: If the Court pleases, before we continue, my notes that I took this morning indicate—I don't know that they are correct, but I think we could possibly cut down the objections if you would clarify whether they are correct or not—that the witness, Mr. Yokono, was to be treated from there on as a witness of the defense. However, later there was an objection to one of the questions as being leading, which was overruled. I think it would clarify the position we take as to objections if we could have a ruling from the Court whether or not this witness is to be considered a witness for the defense or whether this is considered by the Court to be proper cross-examination.

The Court: I didn't make a ruling at any time that he was to be considered a witness for the defense, but I did hold that the examination up to the point in question was to my mind within the reasonable scope of cross-examination.

Mr. Buck: Thank you.

The Court: I don't recall any question propounded to the witness by the defense that was objected to on the ground that it was leading and was overruled. I don't recall that, but you could be right in your view. [100]

(Testimony of Takeshi Yokono.)

Cross-Examination

(Continued)

By Mr. Cades:

Mr. Cades: Miss Reporter, would you mind reading to the witness; there was a question the witness had not answered, your Honor will recall, accounting for currency in the deposit of January 21, and he was asked to come down and examine whatever data was available. Would you mind reading the question, Miss Reporter, please.

The Reporter (Reading): "Q. I am told that there are in the court room all of the books and records of the Company, which have come from the custody of the trustee on dissolution, in that box.

"Would you mind looking through the books and records, or is there any material from which you could be able to tell the Court what the source of that currency is? Would you mind looking and seeing? Step down."

Mr. Saunders: If your Honor please, I object to the question as being irrelevant and immaterial and not within the scope of the direct examination.

Mr. Cades: Did you understand the question, Mr. Yokono?

Mr. Saunders: If your Honor please, we don't like to jump up and down and interrupt the testimony. Would it be possible to allow us a continuing objection to all questions [101] pertaining to the banking procedure which Mr. Cades is about to go into on the grounds that I just asserted?

(Testimony of Takeshi Yokono.)

The Court: Well, I think it has been made sufficiently clear as to what he is going into has just now been recently gone into so that I think I can entertain that as a general objection, and within that particular range I hold that the examination is proper and the objection is overruled. You may have an exception.

The Witness: May I see the deposit slip?

Mr. Cades: In order to have the record clear, I will restate my question.

Q. (By Mr. Cades): I show you here the deposit slip of January 21, 1949, Waipahu Auto Exchange, and the Bank of Hawaii, and particularly the item "Currency, \$2,721," deposited on January 21. I will ask you whether from all of the data, books, and records of the corporation you are able to tell the Court what the source is of that currency?

A. Yes.

Q. Please point to the records and the books from which you can tell. Come down and get them.

(Witness leaves stand.)

A. Sales book here.

Q. Take whatever you want back to the stand, please.

(Witness resumes stand.)

Q. Now what book or record will disclose what the [102] source of that currency is?

A. In this \$2,721, we have these sale of a station wagon to John Saylor.

(Testimony of Takeshi Yokono.)

Q. John B. Saylor?

A. Which he had a cash payment of \$300, and we took a trade-in of an old car for \$700, so there is a \$300 cash receipt there.

Q. Yes.

A. Then on the same day we sold——

The Court: What date?

The Witness: January 20.

A. (Contiuing): We sold to Ignatio Sucalit, we sold him a Willys panel wagon, panel delivery wagon, which he paid in cash \$2,041.55, which I marked "paid" on the bill here and gave receipt to Sucalit. And this other deposit, tire sales, which we made previous to that car sale.

Q. What is the amount of your tire sales previous to the car deal?

A. \$105.37 and \$28.56, which accounts for all these—plus——

Mr. Saunders: May I ask the witness to literally shout. I can't hear a thing.

The Court: Loud.

The Witness: On this \$2,721, some of the money which we had from the stocks issued. [103]

Q. (By Mr. Cades): All right. How much from the stocks issued?

A. Well, the baalnce from this cash receipts we had sales here.

Q. I am asking you, Do you have any book or record to show what was received from the stock?

A. Not right off here.

Q. Not right off. So that, if I understand your

(Testimony of Takeshi Yokono.)

answer, by looking at the books and records you are able to testify—this is just your best opinion, isn't it, that the \$2,700 plus came in part from what? From sales of tires; is that right? A. Yes.

Q. Sales of cars? A. Yes.

Q. And sale of what? Stock in your Company?
A. Yes.

Q. And you think that is what made up the total of \$2,700?

A. No, twenty-eight—this is the total.

Q. Total of \$2,854.93, which is the total deposit?

A. Yes.

Q. That is as close as you can get to it from the books and records? A. Yes. [104]

The Court: Are there two deposit slips there?

Mr. Cades: If your Honor please, I will offer this in evidence at this time as having been identified as a deposit so that it may tie in with his testimony.

Mr. Saunders: Your Honor, may I have the same objection to the introduction of this? It is improper to introduce an exhibit on cross-examination.

The Court: A little louder.

Mr. Saunders: We object on the ground that it is irrelevant, immaterial, and incompetent, that it is improper to be introduced on cross-examination, and that it is not within the scope of the direct examination.

The Court: Overruled.

The Clerk: Defendant's Exhibit No. 3.

(Thereupon, the document above referred to

(Testimony of Takeshi Yokono.)

was received in evidence as Defendant's Exhibit No. 3.)

Q. (By Mr. Cades): Mr. Yokono, I show you, as produced from the records of the corporation in this court what looks like a sales slip to John B. and Rose L. Saylor, Invoice No. 4252, dated January 12, 1949, and at the bottom of that sales slip it shows "Check Rec'd F. S. F. Ltd." Do you know what those initials refer to, F. S. F. Ltd. it looks like? Do you know what those initials refer to?

A. That is the Federal Service Finance.

Q. Federal Service Finance, Limited, isn't it? [105]

A. Yes.

Q. Does that indicate the receipt of a check on the Saylor deal in the amount of \$1,337?

A. We received a check from Federal Services Finance for \$1,337, but as this case broke up, came to open, well, we were in doubt as to which check belonged to which deal.

Q. You have no records to show which check belonged to each deal; is that it?

A. Yes.

Q. Is this the sales book of the Company that I have showed you? Can you identify that as the sales book of the Company?

A. The original was that one. This is the first sales book.

Mr. Cades: The witness is referring to a sales book which has on the cover of it—well, let's say a sales book which begins with numbers 03853.

Q. (By Mr. Cades): That is the one you refer to?

A. Yes.

(Testimony of Takeshi Yokono.)

Q. Well, now, let me refer you to another book, a sales book which begins with numbers 4251. Isn't this a sales book? And on the cover of the second book I see the words "New Car." Do you know whose writing that is? "New Car"?

A. This must be Shintaku's writing.

Q. Shintaku's writing. Shintaku was the vice president [106] of the Company? A. Yes.

Q. Now just refer to that book which has Invoice No. 4252, and I ask you, Is that a regular sales invoice of the Company?

A. This is the regular, original.

Q. Just answer the question. Can you identify this book with Mr. Shintaku's writing on the outside as a regular book of account of the Company, or can't you, or don't you know?

A. It must be.

Q. Are you able to say, as treasurer of the Company, whether it was or was not?

A. Before answering that question, we opened the business with this book here, but as we came about to sell new automobiles, we transferred new automobile sales to a new book so that we can identify car sales and other tire sales, and so forth.

Q. All right. Please now identify for the Court the book into which you transferred your new car sales.

A. That book comes to this serial number of 4251.

Q. Then this is the book in which new car sales were recorded; is that right? A. Yes.

(Testimony of Takeshi Yokono.)

Mr. Cades: If your Honor please, I offer this in [107] evidence. Under the purported by-laws he is supposed to be the custodian of the records and books of the Company.

Mr. Saunders: If your Honor please, I object to Counsel for the Defendant making reference to by-laws when on his own motion they were denied in evidence. According to that, I object to the admission of this document. By the admission of the witness on the stand, this is not the original book. It is a transfer book. The best evidence would be the original book. Further than that, the matter is irrelevant and immaterial and not within the scope of direct examination.

Mr. Cades: For the purposes of completion, your Honor, I will offer both together. They have both been identified, the original and the transcript.

Mr. Saunders: Same objection, your Honor.

The Court: Overruled. Received in evidence.

The Clerk: As Defendant's Exhibits 4-A and 4-B.

(Thereupon, the documents above referred to were received in evidence as Defendant's Exhibits 4-A and 4-B.)

The Court: Those are books that begin with numbers 03853 and 4251?

The Clerk: 4251, that's right.

The Court: Exhibit what?

The Clerk: Exhibits 4-A and 4-B. [108]

Q. (By Mr. Cades): Mr. Yokono, I show you a

(Testimony of Takeshi Yokono.)

letter addressed to Waipahu Auto Exchange from Federal Services Finance Corporation, dated March 16, 1949, and I will ask you, on the third page of the letter there is a legend "Accepted Waipahu Auto Exchange by Anthony Yee"; I ask you first whether you can identify that signature as the signature of Anthony Yee?

A. It looks like Anthony Yee's signature, but I don't know.

Q. It looks like Anthony Yee's signature, but you don't know. Would you care to compare it with the signature that you identified on these purported by-laws as being the signature of Anthony Yee?

A. It looks similar.

Q. It looks similar. Mr. Yokono, did you ever see this letter addressed to the Company of which you were treasurer before now? A. No.

Q. You have never seen the letter? A. No.

Q. And the letter was not taken up with you?

A. No.

Q. So that if Anthony Yee signed the letter and made the arrangements, he made them without your approval or knowledge?

A. It seems that way. [109]

Q. You testified that you knew that he had made some arrangements with finance companies; is that right? A. Yes.

Q. Who was giving the orders on what the arrangements should be, you or Mr. Yee?

A. What is the question?

Mr. Cades: Read the question.

(Testimony of Takeshi Yokono.)

(Question read.)

The Witness: You mean the arrangements for the loans?

Mr. Cades: Arrangements with the finance companies.

A. I don't recall, but it must have been—it must have been Yee.

Q. (By Mr. Cades): No one except Yee——

A. What is that?

Q. No one except Yee had anything to do with it; is that right?

Mr. Saunders: Your Honor, the question is leading and suggestive and calls for something entirely without this witness' knowledge.

Mr. Cades: This is cross-examination, and he can answer. I am not trying to be unfair to the witness; he is just hesitant, that is all.

The Court: Well, I think you had better reframe the question. [110]

Mr. Cades: Very well.

Q. (By Mr. Cades): Mr. Yokono, weren't the arrangements concerning the relationship or the dealings of your Company with the finance companies left entirely to Mr. Yee? A. Yes.

Q. Yes. So that in the ordinary course of business when Mr. Yee entered into a letter arrangement like this, he wouldn't take it up with you as treasurer, would he?

A. Well, I didn't see this letter. He had it with him, I guess.

Q. All right. Now, as a matter of fact, didn't

(Testimony of Takeshi Yokono.)

you have occasion to tell Mr.—Do you know who Mr. Abel Medeiros is? A. Abel Medeiros, no.

Q. Do you know the Ideal Finance and Thrift Company? A. Yes, I know where it is.

Q. And do you know who Mr. Abel Medeiros is in that Company? Did you ever have occasion to tell Mr. Abel Medeiros that all the arrangements for financing were to be made by Mr. Yee?

A. I haven't spoken——

Mr. Saunders: I object. He has already stated he doesn't know who Mr. Medeiros is.

Mr. Cades: Let him answer the question. I don't think the witness should be prompted. [111]

A. I haven't seen——

Mr. Cades: Did I say "telephone conversation"? Read the question.

(Question read.)

A. No.

Q. (By Mr. Cades): Did you ever have any telephone conversations with Mr. Medeiros, as far as you know? A. Myself?

Q. Yes. A. No.

Q. You know of some conversations that were had with Mr. Abel Medeiros, don't you?

Mr. Saunders: If your Honor please, the answer calls for hearsay.

Mr. Cades: I am not going to ask him the gist of them. I want to know whether he knows of such conversations.

Mr. Saunders: There is no way he could know if he didn't make any.

(Testimony of Takeshi Yokono.)

The Court: Overruled.

The Witness: May I have the question, please.

(Question read.)

The Witness: Conversations with whom?

Mr. Cades: Between Mr. Abel Medeiros and representatives of Waipahu Auto Exchange.

A. Not that I know of. [112]

Q. (By Mr. Cades): Were you ever present when Mr. Shintaku talked with Mr. Abel Medeiros?

A. No.

Q. So that as far as your testimony is concerned, you don't know anything about the Ideal Finance and Thrift Company, or dealings with your Company with them?

A. Not until the case broke up.

Q. Until the case broke up; that is, during the term until Mr. Yee ceased to be active in the business, you never heard of any arrangement that was ever made with the Ideal Finance and Thrift?

A. No.

Q. None? A. No.

Q. Mr. Yokono, on December 21, 1948, didn't your Company buy a used car?

A. Could you identify the car so I can recall?

Mr. Saunders: If your Honor please, in the meantime could we make it clear that we would like to renew the same objection we made. He has kind of gotten far afield from the banking situation now and is going into car sales and finance arrangements. We would like to make it clear we are objecting

(Testimony of Takeshi Yokono.)

to the entire line of testimony now being presented by Counsel for the defense.

The Court: Well, it more or less seems to me to go [113] to the matter as to what this witness, who said he was treasurer of the Company, knows, or knew, about the natural affairs of the Company. I think it is permissible.

Mr. Saunders: Could we clarify one thing first, your Honor. Could we have the reporter check back on her notes and see whether Mr. Yokono ever stated that he was treasurer. My recollection is that he did not.

The Court: Well, from my angle it doesn't make any difference in the situation whether it was said on direct examination or whether he said it on cross-examination. I am sure that he made the statement that he was, and it was in connection with either the articles of incorporation, had relation to that, or as to the by-laws, or purported by-laws, whichever one you may choose to refer to those as, and the fact has been submitted on the stand, claimed that he was the treasurer. Examinations as to his knowledge of the financial affairs of the Company are matters of importance.

Mr. Cades: Before I overlook this, your Honor, I would like to have this letter, identified as letter of March 16, 1949, from the Federal Services Finance, admitted in evidence.

The Court: Is that the letter you were requesting the witness——

(Testimony of Takeshi Yokono.)

Mr. Cades: That is the letter, and he has identified it.

The Court: Letter of what date? [114]

The Clerk: March 16, 1949.

Mr. Saunders: I am afraid I didn't hear that. Did you offer that in evidence?

Mr. Cades: I did.

Mr. Saunders: If your Honor please, we object on the grounds (1) that it is improper to identify a document, or introduce it into evidence, on cross-examination; (2) that there is no showing that this letter was ever delivered to Waipahu Auto Exchange; (3) that it is irrelevant and immaterial.

The Court: Well, it isn't offered as an exhibit at this time. It is merely offered for the file.

Mr. Cades: I haven't any objection to its merely being marked for identification. It is all right with me.

The Clerk: Defendant's C, for identification.

(Thereupon, the document above referred to was marked Defendant's C, for identification.)

(Testimony of Takeshi Yokono.)

DEFENDANT'S EXHIBIT C

Federal Services Finance Corporation

718 Jackson Place, N. W.

Washington 6, D. C.

March 16, 1949,

Waipahu Auto Exchange,

Waipahu,

Oahu, T. H.

Gentlemen:

As more 1949 models appear on the market, it becomes necessary for us to readjust rates and terms on the older models.

We therefore seek your co-operation in abiding by the following rules in drawing up contracts for discounting with us:

1. That at least $\frac{1}{3}$ down payment be obtained on each car sold and contract be limited to the months shown below after each model. In no case will a check be issued by us for more than $\frac{2}{3}$'s of the "un-adjusted" Kelly Blue Book Retail Price.

1949 and 1948	24 months
1947	21 months
1946	18 months
1942 and 1941	15 months
1940	12 months

2. On the following models, the time will be limited as shown and the check that we issue shall

(Testimony of Takeshi Yokono.)

not exceed 50% of the "unadjusted" Kelly Blue Book Retail Price.

1939	10 months
1938	8 months
1937	6 months

3. Sales to service personnel should be restricted to officers and married non-commissioned officers of the first three grades, if you desire to discount the contract.

4. Any exceptions to the above must either be confirmed by us prior to delivery, or the deal made on a "subject to financing" basis.

The following basic annual rates apply on the models below:

Cars less than 6 months old	5%
1948-1947	6%
1946	7%
All cars older than 1946 models	8%
Add to all contract for investigation—\$3.50 and \$1.00 for title transfer	

Contracts running less than a year are subject to higher rates than the annual rate. The age of the car determines the basic rate and the short term rate will be found in the schedule below. Rates are shown on a monthly, annual and actual effective interest rate basis.

(Testimony of Takeshi Yokono.)

Basic Rate

5%

No. of Mos.	Mo. Rate	Ann. Rate	Eff. Rate
2	2	12	15.96
3	2.5	10	14.88
4	2.66	8	12.60
5	2.9	7	11.55
6	3.0	6	10.20
7	3.5	6	10.44
8	4.0	6	10.56
9	4.5	6	10.68
10	4.10	5	8.88
11	4.57	5	8.93
12	5	5	8.98
13		5	9.00
14		5	9.00
15	6.25	5	9.04
16		5	9.06
17		5	9.96
18	7.5	5	9.06
21	8.75	5	9.06
24	10.0	5	9.06

6%

No. of Mos.	Mo. Rate	Ann. Rate	Eff. Rate
2	2	12	15.96
3	3	12	17.88
4	3	9	14.28
5	3.3	8	13.44

(Testimony of Takeshi Yokono.)

No. of Mos.	Mo. Rate	Ann. Rate	Eff. Rate
6	3.5	7	11.88
7	4.08	7	12.11
8	4.66	7	12.27
9	5.25	7	12.42
10	5.5	6	11.68
11	5.5	6	10.80
12	6	6	10.92
13	6.5	6	10.92
14	7	6	10.92
15	7.5	6	10.92
16	8	6	11.04
17	8.5	6	11.04
18	9.0	6	11.04
21	10.5	6	11.04
24	12.0	6	11.16

7%

No. of Mos.	Mo. Rate	Ann. Rate	Eff. Rate
2	2	12	15.96
3	3	12	17.88
4	3.33	10	15.84
5	3.33	8	13.08
6	4	8	13.44
7	4.66	8	13.68
8	5.33	8	13.92
9	6	8	14.04
10	6.66	8	14.16
11	6.38	7	12.60

(Testimony of Takeshi Yokono.)

No. of Mos.	Mo. Rate	Ann. Rate	Eff. Rate
12	7	7	12.67
13	7.58	7	12.71
14	8.16	7	12.72
15	8.75	7	12.79
16	9.33	7	12.80
17	9.9	7	12.83
18	10.5	7	12.84

8%

No. of Mos.	Mo. Rate	Ann. Rate	Eff. Rate
2	2	12	15.96
3	3	12	17.88
4	3.33	10	15.84
5	3.75	9	14.88
6	4.5	9	15.24
7	5.25	9	15.60
8	6	9	15.72
9	6.75	9	15.96
10	7.5	9	16.08
11	7.33	8	14.28
12	8	8	14.40
13	8.66	8	14.52
14	9.33	8	14.52
15	10	8	14.52

It is understood and agreed that the difference between our charge to you and your charge to the purchaser will be your reserve. However, your re-

(Testimony of Takeshi Yokono.)

serve cannot be greater than $\frac{1}{3}$ of the charge to the customer. In other words, if you charge the customer 12% and our rate on the particular model is 6%, we will raise our rate to 8% in such an instance. This is to avoid high charges on late model automobiles.

Insurance in accordance with the following rules should be included in the contract.

1949 through 1946—comprehensive and \$50
deductible collision

1942 through 1937—fire and theft only an
\$100 deductible collision

The above may be waived if the purchaser has an effective policy for at least the above coverages and the policy is presented to us when the contract is discounted.

If the above terms are satisfactory to you, please indicate your acceptance by signing the enclosed copy on the line provided below.

Very truly yours,

FEDERAL SERVICES
FINANCE CORPORATION,

/s/ H. P. GILLESPIE,
Manager, Honolulu Branch.

Accepted:

WAIPAHA AUTO
EXCHANGE,

By /s/ ANTHONY YEE.

Marked for identification March 16, 1950.

(Testimony of Takeshi Yokono.)

Q. (By Mr. Cades): Now, referring to this Ideal Finance transaction, don't you recall that on December 21 your Company bought a car from somebody by the name of Mr. Pointer?

A. Could you tell me what kind of a car it was?

Q. Well, do you have a record—In the records and files of the Company there do you have any data as to the cars that you purchased?

A. May I see that. (Handed to witness.) I can recall there was a private financing of myself and Anthony Yee [115] to a certain station wagon, but I don't know if that is the car you are referring to or not.

Q. By "private financing" what exactly do you mean?

A. I mean before we had the corporation.

Q. Well, I am referring to a deal on December 21. That was after the corporation.

A. Oh, December 21.

Q. Have you any records here of the corporation that would throw any light on that purchase?

A. I don't think so.

Q. You don't think so. Well, maybe I can refresh your recollection. Do you know that the corporation bought a car and undertook to pay for the car by paying to Ideal Finance the cost price of the car, or a substantial portion of that? Do you remember anything like that? A. No.

Q. Did the Corporation ever make payments to the Ideal Finance of some money that was borrowed there in order to obtain that car?

(Testimony of Takeshi Yokono.)

A. Borrowing money from the Ideal Finance?

Q. Yes. A. Not that I know of.

Q. Did you ever pay any money to Ideal Finance on a contract?

A. From the Waipahu Auto Exchange? [116]

Q. Yes. A. No.

Q. You never did during the life of the Company? A. No, as far as I know, I haven't.

Q. You haven't as treasurer? A. No.

Q. You have no knowledge of Mr. Medeiros' calling down to Waipahu to find out whether Yee was authorized to turn over a contract to the Ideal Finance? A. No.

Q. Just think carefully. You have no memory of that? A. No.

Q. And before this case broke you never heard of any financing at Ideal Finance? A. No.

Q. None? A. No.

Q. Will you examine whatever records are necessary, as treasurer of the Company, and tell the Court whether on January 20 you didn't pay to Territorial Motors, Limited, the sum of \$3,585.52.

Mr. Saunders: What is the date of that?

Mr. Cades: January 20, 1949.

The Witness: Pay to Territorial Motors?

Mr. Cades: Yes. [117]

A. Yes, we paid for the cars.

Q. (By Mr. Cades): Did you pay that by a cashier's check purchased from the Bishop National Bank?

(Testimony of Takeshi Yokono.)

A. No, I got—I drew my savings out of State Loan and with that money I paid.

Q. You drew your savings out of the State Loan and you paid it in cash to Territorial Motors?

A. In check.

Q. What kind of a check?

A. It was a cashier's check from State Loan.

Q. A cashier's check from State Building and Loan? A. Building and Loan.

Q. I show you a cashier's check dated January 20, 1949, drawn to the order of Territorial Motors, Limited. It is identified as Check No. 9166. I ask you whether you have ever seen that check before?

A. No.

Q. You never saw the check. Do you know whether Mr. Anthony Yee purchased this check from the Bishop Bank? A. No.

Q. You have no knowledge? A. No.

Q. Did you turn over any money to Mr. Yee to purchase a check, any cash, currency, checks, or anything? A. No. [118]

Q. No. In other words, you don't know anything about this check, this cashier's check?

A. No.

Q. Well, will you look at all your books and records, and everything else there is in the court, and explain to the Court what the source was of the money that was used to purchase that cashier's check, please? Take all the time you want.

Mr. Saunders: If your Honor please, he already testified he had never seen the check before, that he

(Testimony of Takeshi Yokono.)

didn't know anything about it, and now he is asked a question to tell where the money came from which he used to purchase the check. It is contrary to what the witness has already stated.

The Court: Well, I suppose the purpose is to find if it is represented in the books.

Mr. Cades: That's right, exactly.

Q. (By Mr. Cades): Do you know whether that check is represented in any of the books of the Company?

A. If I look, sure, maybe I might be able.

Q. Well, in order not to hold up the matter, at the next recess will you look through the books?

Mr. Cades: In the meantime, I would like this check to be marked for identification.

The Court: What is the amount of the check?

The Clerk: \$3,583.52. [119]

The Court: Yes. All right, it may be marked for identification.

The Clerk: It is \$3,585.

The Court: "Three" you said.

The Clerk: The perforation is through it.

The Court: All right.

The Clerk: That is Defendant's D, for identification.

(Thereupon, the document above referred to was marked Defendant's D, for identification.)

(Testimony of Takeshi Yokono.)

Q. (By Mr. Cades): I show you a deposit ticket, what looks like a duplicate of a deposit ticket, of the Waipahu Auto Exchange, deposit in the Bank of Hawaii, of May 2, 1949, showing the deposit of a Bishop Bank check, \$3,582.78. Do you recall the deposit of that check on May 2? A. Yes.

Q. Will you tell the Court what that deposit was?

A. We had to pay Territorial Motors for the purchase of two cars and at this time we were out of funds. So Yee and I agreed that we must help the Company out by financing. Previous to this, Yee and I, before we formed the corporation, sold a car on our own, which netted us \$2,000. Yee gave us his personal check for \$3,582.78, which we deposited with the bank at Waipahu, the Bank of Hawaii in Waipahu.

Q. And this deposit ticket represents the deposit of Mr. Yee's personal check? [120]

A. Yes, but that check bounced back.

Q. This check bounced?

A. His personal check bounced.

Q. I will get to that in a minute. You can state positively that the deposit of May 2, 1949, represented the deposit of a personal check of Anthony Yee to the Corporation in the amount of \$3,582.78; that is right, isn't it?

A. That represented part of my money and part of his money.

Q. Part of his money and part of yours?

A. Yes.

Q. But the check was a Yee check?

(Testimony of Takeshi Yokono.)

A. That's right.

Mr. Cades: I offer this in evidence, your Honor.

Mr. Saunders: If your Honor please, I object, first, on the grounds that it is improper to enter it on cross-examination; secondly, it is irrelevant and immaterial; thirdly, it is beyond the scope of the proper cross-examination.

Mr. Cades: If your Honor please——

The Court: Well, I can't see anything to your objection except your claim it is beyond the scope of cross-examination. It is overruled.

The Clerk: Defendant's Exhibit No. 5.

(Thereupon, the document above referred to was received in evidence as Defendant's Exhibit No. 5.) [121]

DEFENDANT'S EXHIBIT No. 5

[Deposit Slip]

Bank of Hawaii

Deposited to Credit of

Waipahu Auto Exchange

May 2, 1949

Subject to Terms Printed Below:

The Bank of Hawaii and the Depositor agree that the provisions of Sections 8096 and 8097, Revised Laws of Hawaii, 1945, or any amendments thereto, apply to all items for deposit accepted by the Bank and that the Bank, in addition, shall be entitled to charge back to the Depositor any item listed on this

(Testimony of Takeshi Yokono.)

deposit slip at any time until such item has been collected. A particular item deposited will be protested only upon receipt of specific instructions.

List Each Check Separately

Silver

Currency

Checks on Following Banks:

Bishop\$3,582.78

[Stamped]: Duplicate 3582.78 Dollars Bank of Hawaii Waipahu Branch S Teller.

Admitted March 16, 1950.

Mr. Cades: Defendant's Exhibit No. 5.

Q. (By Mr. Cades): Now, the check of Anthony Yee bounced, and the bank notified you that the check was no good; isn't that right?

A. That's right.

Q. In the meantime, your account in the Bank of Hawaii had been credited with this payment, had it not? With this deposit, I should have said.

Mr. Saunders: If your Honor please, that question calls for the internal workings of the Waipahu branch of the Bank of Hawaii. It is not up to this witness to testify.

The Court: Yes, that is a presumption that the witness might not have any knowledge of. He could have definite knowledge of the fact.

Mr. Cades: I agree. I think that objection is well taken, your Honor.

(Testimony of Takeshi Yokono.)

Q. (By Mr. Cades): Will you state to the Court what happened after you were notified that the check was no good?

A. Well, after hearing from the Bank that the check bounced, we got in touch with Shintaku, and I went after Yee, and we waited for him till about—we called on him at his home at about 10:30, I guess, and he was home, so we asked him why it was that his check bounced, which we thought that would have been credited to us, and Yee said—

Mr. Saunders: If your Honor please, I object to [122] anything as to what Yee said as being hearsay.

Mr. Cades: Your Honor, that objection is not well taken. The purpose of this testimony is in response to a statement that was made that they purported to operate under these by-laws. I am probing into how they operated under the by-laws; so, your Honor, the \$64 question will be: Is it true that this technical protest of the plaintiff, that we had to have a resolution or something covering all these checks, is so, or is this the kind of behavior that justifies the Bank? That is the sole purpose of the examination.

Mr. Saunders: Your Honor, we are making no such technical claim other than the usual rule, or general rule, that the drawee bank at its peril must identify the payee. If at any time during this five-months period they had made inquiry, they would have found out that Anthony Yee was not authorized to cash these checks. There is nothing

(Testimony of Takeshi Yokono.)

in here that is a technical offense, other than that we are relying on the general rule of law, that the defense of the bank is an affirmative defense. Even if Defendant's Counsel's reason for going into this testimony is correct, it still doesn't justify him in getting hearsay evidence in the record. Anything Anthony Yee said is strictly hearsay and should be overruled, we submit.

The Court: What have you to say as to the hearsay feature? [123]

Mr. Cades: If your Honor please, hearsay testimony is only a valid objection when the truth of what is said in the hearsay is the assertion of that truth. We are not concerned with the truth. What it does is show how the Company operated, which is the \$64 question.

The Court: Well, the explanation then is immaterial. The explanation of the witness as to what he and another member of the association had to say to Mr. Yee about his shortcomings in not making a sufficient deposit of personal funds to take care of the check given to the Bank of Hawaii, drawn on the Bank of Hawaii doesn't seem to be material.

Mr. Cades: Very well. Just avoid saying what Mr. Yee said to you. May we have the answer read.

(Answer read.)

Q. (By Mr. Cades): After the check bounced, didn't the Bank of Hawaii send to you a cashier's draft that had been purchased by Mr. Yee?

A. No.

(Testimony of Takeshi Yokono.)

Q. They didn't? A. I haven't seen it.

Q. Well, in sequence, Mr. Yee's personal check that had bounced was later returned to you by the bank, wasn't it?

A. You mean Yee's personal check?

Q. Yes, the one that had been deposited and bounced was later returned to you, wasn't it—to the Corporation, I [124] mean?

The Court: What was that, a personal check or check of Waipahu Auto Exchange?

Mr. Cades: Your Honor, the item I am referring to is a deposited item as shown on this—

The Court: Yes, I understood that was supposed to be deposited to the account of the credit of the Waipahu Auto Exchange.

Mr. Cades: That is correct, and the item bounced.

The Court: And the Waipahu Auto Exchange drew its check in equal amount in favor of Territorial Motors?

Mr. Cades: That's right.

The Court: And that bounced?

Mr. Cades: No.

The Court: Now Yee made good the check that bounced to the Territorial Motors? That is the way I get the testimony.

Mr. Saunders: I think, if your Honor please, Counsel and I can stipulate as far as it has gone these are the facts: Anthony Yee drew a check to Waipahu Auto Exchange. Waipahu Auto Exchange turned around and drew a check for the amount to Territorial Motors. The check to Territorial Motors

(Testimony of Takeshi Yokono.)

cleared the bank; the check from Anthony Yee to Waipahu Auto Exchange bounced. Will you stipulate that those are the facts?

Mr. Cades: I don't think that is accurate. I think the facts are—It is pretty painful to get out, but my [125] understanding of the facts, your Honor, although I don't want to testify, is that this \$3,582.78 was deposited as Yee's personal check to the account of the corporation. On this basis, the basis of this check, and the fact they thought they had the money in the bank, they drew a check to Territorial Motors, Limited, to pay for some cars. Later it developed that Yee's check was no good and the bank called them and asked them to make good; Anthony Yee made good by depositing in the bank account cashier's check which he purchased from the Bank of Hawaii in order to cover over the \$3582 which was no good in his personal account, thereby making good the check that had been issued to Territorial Motors. I think that is all the facts. If there is any dispute, we will get it out in the long painful way.

Mr. Saunders: We dispute those are the facts. I think these facts are within the knowledge of the defendant, and certainly within the knowledge of Counsel for the defendant, Mr. Kidwell. I think it is clear, and perhaps Mr. Kidwell will stipulate that the Waipahu Auto Exchange check made payable to Territorial Motors was paid by the Waipahu branch of the Bank of Hawaii to Territorial Motors. and that they then made demand on Anthony Yee

(Testimony of Takeshi Yokono.)

to cover his own personal check which had bounced, but that the Waipahu branch did pay the check to Territorial Motors. In other words, the Territorial Motors check cleared without question. The only check that [126] bounced was Anthony Yee's check.

The Court: That doesn't square with the witness' testimony. He said the check bounced and he and another director or stockholder or officer went to Yee's house at 10:30 at night and subsequently Yee made good the deficiency at the bank by a cashier's check.

Mr. Cades: That is correct. Let's ask the witness.

Q. (By Mr. Cades): When this check bounced and was made no good, Yee later made the check good, didn't he? A. Yes.

Q. Do you know how he made it good?

A. I didn't know at that time.

Q. You didn't know at the time, but you did know that he made it good? A. Yes.

Q. You don't know whether he made it good by the deposit of a cashier's check or not?

A. I knew at that time——

The Court: Deposit or purchase of a cashier's check?

Mr. Cades: The "purchase" of a cashier's check would be more accurate.

Mr. Saunders: If your Honor please, all of this is without the possible scope and knowledge of this witness. It all has to do with the Waipahu Auto Exchange and Anthony Yee. There is no showing

(Testimony of Takeshi Yokono.)

he was present at any of this. [127] There is no way he could know this other than hearsay.

Q. (By Mr. Cades): You don't know then?

A. No.

Q. You were looking to Anthony Yee, that is all, to make good? A. Yes.

Q. You were depending on him to make good?

A. That is true.

Q. He was the president of the Company and you knew it had bounced and you were looking to him to make the item good?

A. Well, it was his personal check, so we expected him to make good on that.

Q. Now, just refer one minute again to this purchase of January 20. I am sorry, I have this a little out of turn. I now show you the two invoices for the purchase from Territorial Motors, Limited, one in the amount of \$1934.73—that invoice is No. 10110—the second invoice is numbered 10111 and is in the amount of \$1650.79. I call your attention to the fact that the totals of those two are exactly the total of the cashier's check of January 20, which is \$3585.52, that cashier's check being in evidence—Is this in evidence or identification?

The Clerk: Identification.

Q. (Continuing): Identification as Item No. D. And [128] I will ask you whether, in looking at those, you are not able to say that this cashier's check was in fact the payment that was made for the two cars that were purchased from the Territorial Motors. Can you examine them and see?

(Testimony of Takeshi Yokono.)

Mr. Saunders: Could I see some of these invoices.

Mr. Cades: I will be happy to show them to you. Well, I should have shown them to you ahead of time. I thought you had seen them. I think you did; I handed them to you.

Mr. Saunders: Then I have lost track in the meantime.

Mr. Cades: Just a minute. Let Counsel examine this.

(Handed to Counsel.)

Mr. Saunders: No, I have never seen these.

Q. (By Mr. Cades): Do you understand the question, Mr. Yokono?

A. You want me to identify this as a payment for these two cars?

Q. I want to know whether you are able to from that, plus the books and records of the Company? You weren't able to before.

A. No, this and this is different. This two invoices I know I paid them personally with check from State Savings and Loan Company. I had my cashier's check from State Savings [129] and Loan, and we went to Territorial Motors to pay that.

Q. On January 20, 1949? A. Yes.

Q. Do you have a record as to what the amount of your cashier's check was from the State Building and Loan? A. Not off hand.

Q. You are merely talking from memory now?

(Testimony of Takeshi Yokono.)

A. Yes. Well, through identifying, if that car is one for Saylor and one for Sualit.

Q. Yes.

A. If that car is one for Sualit and one for Saylor, I know I went there with \$4,000 cashier's check from State Savings and Loan, as far as I remember, and I don't see why that other check should have been in there as payment for that. I don't understand the check.

Q. Well, isn't this what happened. Didn't you take your cashier's check and endorse it over to Mr. Yee and ask Mr. Yee to go and purchase a cashier's check?

A. No.

Q. You didn't do that?

A. We went direct to Territorial Motors and I paid to the sales manager there.

Q. Did the Territorial Motors then give you cash in return?

A. Yes. [130]

Q. Cash?

A. No. No, it was a check.

Q. You mean Territorial Motors then gave you a check?

A. Yes.

Q. In return?

A. For the balance.

Q. What happened to that check?

A. That is my own money so I took it for my own personal use.

Q. None of that is reflected on any of the corporation records as far as you know?

A. Well, it is on this deposit that we have the first initial deposit. The sales from that cars are in here.

Q. I am not talking about the sales of the car.

(Testimony of Takeshi Yokono.)

I am talking about the fact that you say you personally went down and paid Territorial Motors \$3585.52 and that they gave you a check back for the difference between that and \$4,000; is that right?

A. That is how I recall it.

Q. Did the \$3585.52 ever go through the Waipahu Auto Exchange bank account? A. No.

Q. Did it ever go through the cash receipts book?

A. You mean that cashier's check there? [131]

Q. The amount that you paid for this car. That would be a receipt by the Waipahu Auto Exchange, would it not? A. Yes.

Q. Well, was it ever recorded as a cash received by Waipahu Auto Exchange?

A. I couldn't see it in here.

Q. And you are sure this was not some personal arrangement that you and Anthony Yee had, some kind of a personal arrangement between the two of you whereby you turned money over to Yee and he bought the draft? You are sure that is not true?

A. No.

Q. You deny that? A. Yes.

Q. Now, you were sitting in the court room when the testimony was given by Mr. Lee that the corporation acted as though these were the by-laws, and by "these" I refer to Exhibit No. 1, for identification. You heard that? A. Yes.

Q. All right. Now, referring to these purported by-laws, did you ever read these by-laws?

A. Yes.

Q. How many times? Once? Twice?

A. Once.

(Testimony of Takeshi Yokono.)

Q. Once. Just at the time you signed them?

A. Yes.

Q. Then you never saw them again after that, did you?

A. You mean read through it? No.

Q. Never read them again? A. No.

Q. You heard Mr. Lee testify that he was not notified and never attended any of the meeting?

A. Yes.

Q. Did the Company ever appoint a substitute director, do you know?

A. What is a substitute director?

Q. Do you know what a substitute director is?

A. No.

Q. There is a provision in here that you read once about there being a substitute director, but as far as your knowledge goes, there was no substitute director ever appointed for Mr. Lee?

A. No.

Mr. Cades: We have no further questions.

Mr. Saunders: If your Honor please, could we have a recess.

The Court: Yes.

(Recess had.)

Mr. Saunders: We have no further questions of this witness, your Honor. [133]

The Court: All right, you are excused.

(Witness excused.)

Mr. Saunders: At this time, if your Honor please, by stipulation of Counsel for the defendant and plaintiff, we would like to introduce in evidence the bank statements of Waipahu Auto Exchange, Limited, in the Waipahu branch of the Bank of Hawaii for the months January through May, 1949.

The Court: Bank of Hawaii?

Mr. Saunders: Waipahu branch.

The Court: Bank statements?

Mr. Saunders: For the months, inclusive, January through May, 1949.

Counsel for the defendant seems to want January through November. We have no objection to that.

The Court: Through when?

Mr. Saunders: Through November, 1949.

The Court: All right, they may be received in evidence.

The Clerk: Plaintiff's Exhibits D-1 to D-11, inclusive.

(Thereupon, the documents above referred to were received in evidence as Plaintiff's Exhibits D-1 to D-11, inclusive.)

Bank of Hawaii

Waipahu Auto Exchange, Ltd.

P. O. Box 380

Waipahu, Oahu, T. H.

Statement of your account to close of business May 31, 1949

Old Balance	Checks in Detail		Deposits		Balance
	Balance Brought Forward	Date	Date		
1,009.28	May 2 '49	May 2 '49	Apr 30 '49	1,009.28	
1,009.28	May 5 '49	May 5 '49	May 2 '49	1,009.28*	
939.50	May 5 '49	May 5 '49	May 5 '49	939.50*	
873.35	May 5 '49	May 5 '49	May 5 '49	873.35*	
623.35	May 6 '49	May 6 '49	May 5 '49	623.35*	
618.61	May 10 '49	May 10 '49	May 6 '49	618.61*	
588.78	May 16 SC	May 16 SC	May 10 '49	588.78*	
587.28	May 17 '49	May 17 '49	May 16 SC	587.28*	
506.53	May 23 '49	May 23 '49	May 17 '49	506.53*	
338.43	May 25 '49	May 25 '49	May 23 '49	338.43*	
299.89	May 27 '49	May 27 '49	May 25 '49	299.89*	
#73	40.00		May 27 '49	249.11*	
78	3.30				
79	33.44				
80	3.11				
81	7.63				
82	58.53				
	<u>146.01</u>				
	103.10				
	<u><u>249.11</u></u>				

[Figures shown in italics appeared in pencil on original.]

Waipahu, Hawaii, U.S.A. 4-28-29 10 509 No. 69

WAIPAHU BRANCH

BANK OF HAWAII

59-119

PAY TO THE ORDER OF *Territorial Motors, Ltd.* \$ *3582.78*

Three thousand Five hundred Eighty two & 78/100

COUNTERSIGNED

W. F. H. Shintaku
VICE PRESIDENT

BY *G. Yokono*
TREASURER

WAIPAHU AUTO EXCHANGE, LTD. DOLLARS

13-4-8

FOR DEPOSIT WITH
BISHOP NATIONAL BANK OF HAWAII
AT HONOLULU
TO THE CREDIT OF
TERRITORIAL MOTORS, LTD.

99900

PAY TO THE ORDER OF
ANY BANK-BANKER-TRUST CO.
ALL PRIOR ENDORSEMENTS GUARANTEED

APR 20 1929

BISHOP NATIONAL BANK OF HAWAII
59-101 AT HONOLULU 59-101

PL D-5

Mr. Saunders: And the canceled checks are included in that.

The Court: One to eleven? [134]

The Clerk: Yes, your Honor.

The Court: You say the canceled checks are included?

Mr. Saunders: With each statement.

The Court: Yes.

Mr. Saunders: That is the case for plaintiff, your Honor. We rest.

Mr. Cades: If your Honor please, at this time we move——

The Court: Just a minute. Is there anything that you wanted to call the Court's attention to in this last exhibit? You know, just dumping something like that in the Court's lap—maybe there are things in there I ought to know.

Mr. Saunders: The month of May, 1949, your Honor, the statement for that month shows a deposit in the bank, that is the deposit to the account of Waipahu Auto Exchange on May 2, 1949, of \$3582.78, which is a figure that has been alluded to here as being the same figure as the amount of Anthony Yee's check and the amount of the check to Territorial Motors.

The Court: There is credit given for the check?

Mr. Saunders: And no overdraft shown, your Honor. We submit that that indicates that Anthony Yee was extended credit by the bank at Waipahu as not showing any overdraft against the account of Waipahu Auto Exchange, and therefore Anthony Yee, when he purchased the bank draft from the

Bank of [135] Hawaii, was covering his own check.

The Court: The witness testified the check bounced. That could be true, of course, and Yee made it good right then.

Mr. Saunders: Yee made arrangements with the Bank of Hawaii to make it good.

The Court: All right.

Mr. Saunders: We further would like to call the Court's attention to the fact that all checks in this exhibit, which include all checks drawn by Waipahu Auto Exchange during the period in question, were countersigned. They were signed Waipahu Auto Exchange, Limited, by Takeshi Yokono, treasurer, and countersigned by F. H. Shintaku, vice president. That is the substance of each check.

The Court: Yes.

Mr. Saunders: In each case they are countersigned.

The Court: That was assumedly an arrangement made with the bank that that was the form of signature.

Mr. Saunders: For the Corporation.

The Court: For withdrawal of money from the bank.

Mr. Saunders: And every single one of these checks, if your Honor please, was so signed.

Mr. Cades: If your Honor please, we at this time move for a judgment of the Court of the dismissal of this action pursuant to the rule. On the evidence that has been [136] adduced, far from there being any showing made that the Bank has improperly paid checks, the showing goes to show

the affirmative proof that during the—I don't want to make my argument. I would rather make my motion first and then I will argue. First, there is affirmative evidence that Yee was president of the Corporation during all the period of the withdrawal of the funds.

The Court: What is your motion, to dismiss or motion for judgment for defendant?

Mr. Cades: My motion is for judgment for the defendant upon the evidence adduced.

The Court: Go ahead.

Mr. Cades: It is on the ground that it affirmatively appears that the checks which form the basis of this action were all cashed by Yee in his capacity as president of the Corporation, and it affirmatively appears that he was president of the Corporation during that period.

Secondly, it affirmatively appears that the cashing by Anthony Yee was satisfactory to the plaintiff, because by their action in cashing a check similarly endorsed they ratified and confirmed and approved the action of their bank in paying checks payable to Waipahu Auto Exchange by making the cash payment to Anthony Yee as president.

The third ground of our motion is that it affirmatively appears from the conduct of the Corporation and the manner [137] in which its officers attended to their business that the Corporation itself looked to Yee as president for all of the financing arrangements, and that the treasurer took whatever orders or instructions—he looked to Yee for information as to advice as to financing. And under those cir-

cumstances the plaintiff has failed to prove the allegation of its amended complaint, which is that Anthony Yee cashed the checks without any right, authority, or permission; and that because of such failure of proof the defendants are entitled to judgment.

We are prepared to go ahead and argue the motion, your Honor, if your Honor wants to hear it at this time.

The Court: Well, better argue it.

(Argument on motion by Counsel.)

The Court: My view is that payment was made to the payee of the checks of the plaintiff to an authorized agent to receive payment. The testimony shows, through the treasurer's testimony, that Yee was authorized; if not specifically commissioned, it was generally known by the officers of the Company that he was to make financial arrangements with the plaintiff in the case, and he is the one who was dealing with the plaintiff in the case as the one authorized so to do by the Waipahu Auto Exchange. And when he was introduced—it doesn't show by whom—to the Bishop Bank, upon which the checks were drawn, as being the president of the Corporation [138] of which he had possession of the checks and asserted that he had authority to receive the payment of the check for the Waipahu Auto Exchange, I can't see that any liability attached to the defendant in paying the checks to the order of the Waipahu Auto Exchange, endorsed by its president.

I find the defendant without liability in the case

and render judgment for the defendant.

Mr. Cades: If your Honor please, may we submit the findings of fact for the signature of the Court pursuant to the rule.

The Court: Yes, you prepare findings of fact and submit a copy to the plaintiff. I wish them to have every right of objection and exception to the proceedings and findings of the Court and the judgment, and the form of judgment as well. And if Counsel for the Plaintiff has any objection to the findings of fact prepared by defendant, or wants to add anything, he can bring it to the Court at some point of time.

(Thereupon, at 3:50 p.m., March 16, 1950, the hearing was adjourned.) [139]

CERTIFICATE

I, Lucille Hallam, Official Reporter, U. S. District Court, Honolulu, T. H., do hereby certify that the foregoing is a true and correct transcript of my shorthand notes taken in Civil No. 947, Federal Services Finance Corporation, etc., Plaintiff, vs. Bishop National Bank of Hawaii at Honolulu, etc., Defendant, held March 15 and 16, 1950, before Hon. Delbert E. Metzger, Judge.

April 20, 1950.

/s/ LUCILLE HALLAM.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD
ON APPEAL

United States of America,
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, consists of the following listed pleadings, minutes of the court, transcript of proceedings, and exhibits of record in said cause:

Original Pleadings

Answer of Bishop National Bank of Hawaii at
Honolulu

Findings of Fact and Conclusions of Law
Judgment

Notice of Appeal and Bond on Appeal

Order Extending Time to File the Record on
Appeal

Copies of Pleadings

Complaint and Summons

Amended Complaint and Summons

Stipulation Abridging Record to be Printed

Stipulation as to Record on Appeal

Minutes of the Court

March 15, 1950

March 16, 1950

Transcript of Proceedings

March 15 and 16, 1950

Exhibits

Plaintiff's Exhibits "B-1" to "B-12," inclusive,
"C," and "D-1" to "D-11," inclusive

Plaintiff's No. 1 for identification

Defendant's Exhibits Nos. 1, 2, and 2-A, 3, 4-A
and 4-B, and 5

Defendant's "C" and "D" for identification

I further certify that all copies of pleadings included in this record on appeal are true and correct copies of the originals on file in this court.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 1st day of September, 1950.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District Court, District of
Hawaii.

[Endorsed]: No. 12678. United States Court of Appeals for the Ninth Circuit. Federal Services Finance Corporation, a Corporation, Appellant, vs. Bishop National Bank of Hawaii at Honolulu, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Territory of Hawaii.

Filed September 8, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit
No. 12678

FEDERAL SERVICES FINANCE CORPORATION, a Delaware Corporation,
Appellant,
vs.

BISHOP NATIONAL BANK OF HAWAII AT
HONOLULU, a National Banking Association,
Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL

The points upon which Federal Services Finance Corporation, Plaintiff and Appellant in the above-entitled cause, intends to rely on this appeal are as follows:

1. The District Court erred in denying the offer in evidence by Appellant of the By-Laws of the Waipahu Auto Exchange, Limited, being its Exhibit No. 1 for identification.

2. The District Court erred in allowing counsel for Defendant, over objection of counsel for Plaintiff, to cross-examine the witness Yokono concerning the authority of Anthony Yee in regard to the management of the affairs of Waipahu Auto Exchange, Limited, said cross-examination not being within the scope of the direct examination.

3. The District Court erred in finding in paragraph 6 of the Findings of Fact that Anthony Yee "as such President endorsed and cashed said checks."

4. The District Court erred in finding in paragraph 7 and paragraph 8 of the Findings of Fact that Anthony Yee was acting in his capacity as President of Waipahu Auto Exchange, Limited, in presenting for payment and cashing the checks listed therein.

5. The District Court erred in finding in paragraph 9 of the Findings of Fact that Anthony Yee was acting in his capacity as President of Waipahu Auto Exchange, Limited, in presenting and cashing the check described therein.

6. The District Court erred in finding in paragraph 12 of the Findings of Fact that "The deposit by the Plaintiff of a check cashed for the corporation by Anthony Yee constituted a representation

to the Bank that Anthony Yee was authorized to cash checks.”

7. The District Court erred in finding in paragraphs 13 of the Findings of Fact that “The Treasurer was relying upon the President for the financial operations of Waipahu Auto Exchange, Limited.”

8. The District Court erred in concluding that by virtue of his office as President of Waipahu Auto Exchange, Limited, Anthony Yee had *prima facie* authority to endorse negotiable paper and receive payment thereon on behalf of said corporation.

9. The District Court erred in concluding that the acts of officers and directors of Waipahu Auto Exchange, Limited in permitting the President to make certain financial arrangements for said corporation, impliedly authorized the President, Anthony Yee, to endorse the checks in question and receive payment therefor on behalf of said corporation.

10. The District Court erred in concluding that the President, Anthony Yee, had apparent authority to endorse the checks in question and receive payment therefor on behalf of said corporation.

11. The District Court erred in concluding that the Plaintiff had wholly failed to prove the allegation No. 5 of its Complaint, viz:

“On or about the respective dates of said checks one Anthony Yee took said checks and wrongfully, and without any right, authority or permission, endorsed each thereof in blank with the name of the payee named therein.”

12. The District Court erred in concluding that each of said checks had been paid in accordance with the terms thereof.

13. The District Court erred in dismissing the action upon its merits and rendering judgment in favor of the Defendant.

Dated: Honolulu, Hawaii, this 30th day of August, 1950.

FEDERAL SERVICES
FINANCE CORPORATION,
Appellant.

By /s/ WILLIAM W. SAUNDERS,

By /s/ EDWARD Z. BUCK,

Its Attorneys.

Receipt of Copy Acknowledged.

[Endorsed]: Filed September 8, 1950.

[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED

Federal Services Finance Corporation, Appellant in the above-entitled cause, hereby designates for printing the following portions of the record on appeal:

(1) Complaint.

(2) Defendant's Answer to Complaint.

- (3) The Amended Complaint.
- (4) Transcript of Proceedings.
- (5) The following exhibits or parts thereof:
 - (a) Plaintiff's Exhibits B-1 through B-12, inclusive.
 - (b) Defendant's Exhibit No. 1.
 - (c) The following excerpts from Plaintiff's Exhibit No. 1 for identification. Title of exhibit; Article III, Sections 3, 4 and 5, Pages 4-6; Article IV, Sections 1, 2, 3, 4, 5 and 6, Pages 6-8; Article V, Pages 8-9; Article IX, to end of document, last page.
 - (d) The following excerpts from Plaintiff's Exhibit C: Certification and Flyleaf; First Page, through Articles I and II; Article VII, to bottom of Page 9; all of Page 10; all of the last two pages of the exhibit, being the Affidavit of Anthony Yee, Kay Y. K. Pang and Takeshi Yokono.
 - (e) The following excerpts from Plaintiff's Exhibit D-5: All entries on the statement for May, 1949, the cancelled check dated April 29, 1949, included therewith, but excluding other checks.
- (6) Findings of Fact and Conclusions of Law.
- (7) Judgment.
- (8) Notice of Appeal and Bond on Appeal.

(9) Order Extending Time to File the Record on Appeal.

(10) Stipulation abridging record to be printed.

(11) Statement of Points upon which Appellant intends to rely on appeal.

(12) This Designation.

Dated: Honolulu, Hawaii, this 30th day of August, 1950.

FEDERAL SERVICES
FINANCE CORPORATION,
Appellant.

By /s/ WILLIAM W. SAUNDERS,

By /s/ EDWARD Z. BUCK,

Its Attorneys.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 8, 1950.

[Title of Court of Appeals and Cause.]

COUNTER DESIGNATION OF PORTION
OF RECORD TO BE PRINTED

Bishop National Bank of Hawaii at Honolulu, Appellee in the above-entitled cause, hereby designates for printing, in addition to the portion designated in Appellant's designation served on the Appellee on August 30, 1950, the following portions of the record on appeal:

(1) Defendant's Exhibit No. 2 (both the face and the reverse side);

(2) Defendant's Exhibit No. 2a;

(3) Defendant's Exhibit No. 5;

(4) Defendant's Exhibit C for identification;

(5) Defendant's Exhibit D for identification;

(6) This Counter Designation.

Dated: Honolulu, Hawaii, this 31st day of August, 1950.

BISHOP NATIONAL BANK OF
HAWAII AT HONOLULU,
Appellee.

By /s/ J. RUSSELL CADES,
Its Attorney.

SMITH, WILD, BEEBE & CADES, ANDERSON,
WRENN & JENKS,
Of Counsel.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 8, 1950.